CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 28 **JULY 27, 1994** **NO. 30**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 94–60)

REQUIRED INFORMATION ON DRAWBACK CLAIMS AND BOND REQUIREMENTS FOR ACCELERATED PAYMENT DRAWBACK CLAIMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: This notice advises interested parties that Customs intends to require full compliance with Part 191, Customs Regulations and Customs Form 331. In particular, we will give specific attention to the information set forth in (a)–(d) of this notice. Further, Customs will require that a separate bond be filed to secure accelerated drawback payments or to file claims under the Exporter's Summary Procedure (ESP).

SUMMARY: As of October 1, 1994, any drawback claim filed with the Customs Service must contain the information as required in this notice. In addition, only bond type "1a" will be accepted to secure an accelerated drawback claim or to file claims under ESP.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs has in recent years taken steps to modernize and improve its Drawback Program. The desirability of automating the filing and processing of drawback claims has long been recognized by the agency. To that end, development work, including meetings and working sessions with the trade, was initiated in 1991. However, development was terminated during negotiating on the Customs Modernization Act, the "CMA" (passed as part of P.L. on December 8, 1993). The automation of drawback claim processing is expressly provided for in that legislation.

Prior to passage of the CMA, the General Accounting Office (GAO) conducted a review of the Drawback Program as part of their financial statement audit pursuant to the Chief Financial Officers Act of 1990 (Public Law 101–576) (the "CFO") (See GAO/AIMD–94–38, dated March 1994). That review concluded that the ACS drawback module that was being developed was deficient in respect to requirements of the CFO. Specifically, the module could not adequately match claims with import entries and did not provide satisfactory controls over accelerated payments through the bonding procedures.

In response, the Customs Service has undertaken a complete redesign of the current Drawback Module of the Automated Commercial System (ACS) to allow for electronic claim submission and drawback processing. An interdisciplinary Customs group formed to address drawback automation requirements conducted its first meeting on May 3–5, 1994, and agreed on the features a drawback automation redesign should contain. The proposed features of the automated drawback system were presented to members selected by the trade community at a meeting held on June 30, 1994. At that meeting, the short term automation plans to address these issues and the long term plans for full automation of the Drawback Program were discussed.

In order to meet the requirements of the CFO until such time as that the automated drawback process can be fully automated, the Customs Service is developing a prototype that will be in place by October 1, 1994. As of that date, any drawback claims must contain the following:

(a) Import entry number against which drawback is claimed;
(b) Duty amount claimed against each import entry;
(c) Calculated claims based on actual duties paid on the liquidated import entry; and
(d) IRS number of actual claimant (not broker or agent).

On or after October 1, 1994, we encourage drawback claimants to submit their claims electronically. The manual input by Customs personnel of a non-electronically filed claim into the prototype automated drawback system will unnecessarily delay its processing. Therefore, any claimant filing their claim in an automated environment with the Customs Service will be given priority drawback processing. Non-conforming claims will be rejected.

Regarding bond sufficiency, the automated prototype will improve our ability to monitor drawback bonds on a national basis. As of October 1, 1994, Customs will only accept a bond type activity code "1a" for the Drawback Program. A bond type activity code "1, 1a" will no longer be accepted. Any bonds with activity code "1, 1a" currently on file with Customs for the drawback program will be invalid. The bond amount for accelerated drawback payments must be on a dollar-for-dollar basis.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Branch Chief, Drawback and Broker Licensing, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 at (202) 927–0916.

Dated: July 6, 1994.

SAMUEL H. BANKS,
Assistant Commissioner,
Office of Commercial Operations.

U.S. Customs Service

General Notices

DATES AND DRAFT AGENDA OF THE TENTH SESSION OF THE HARMONIZED SYSTEM REVIEW SUBCOMMITTEE OF THE CUSTOMS COOPERATION COUNCIL

AGENCIES: U.S. Customs Service, Department of the Treasury, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the tenth session of the Harmonized System Review Subcommittee of the Customs Cooperation Council.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Review Subcommittee of the Customs Cooperation Council.

DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Director, International Nomenclature Staff, U.S. Customs Service (202–482–7000) or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. international Trade Commission (202–205–2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States ("HTSUS"). The Harmonized System Convention is under the jurisdiction of the Customs Cooperation Council ("CCC").

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions con-

cerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium.

In order to ensure that the Harmonized System continues to reflect changes in technology and in patterns of international trade, the Harmonized System Review Subcommittee ("RSC") was created as a subcommittee of the HSC. As with the HSC, the RSC meets in Brussels, Belgium. The RSC recently completed a sector-by-sector review of the Harmonized System. That review resulted in certain legal amendments to the text of the Harmonized System. After being approved by the HSC, the amendments were adopted by the CCC in July 1993. Under article 16 to the Harmonized System Convention, the amendments will become effective on January 1, 1996, with the exception of those amendments against which a reservation was entered by a contracting party by January 5, 1994.

The last session of the RSC was its ninth, and it was held in November 1993. At that session, the RSC began its examination of the consequential amendments to the Explanatory Notes resulting from the above-mentioned legal amendments to the text of the Harmonized System. The next session of the RSC will be its tenth, and it will be held from September 5 to September 16, 1994. At its tenth session, the RSC will complete its examination of the above-mentioned consequential amendments to the Explanatory Notes. The results of the RSC's ninth and tenth sessions will be examined by the HSC at its future sessions.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the U.S. Department of the Treasury, represented by the U.S. Customs Service, the U.S. Department of Commerce, represented by the Bureau of the Census, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the CCC. The Customs Service representative serves as the head of the delegation at the sessions of the HSC. The ITC representative serves as the head of the delegation at the sessions of the RSC.

Set forth below is the draft agenda for the next session of the RSC. Copies of available agenda-item documents may be obtained from either the Customs Service or the ITC. Comments on agenda items may be directed to the above-listed individuals.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

[Attachment: Attachment A]

Attachment A
38.756 E

DRAFT AGENDA FOR THE TENTH SESSION OF THE HARMONIZED SYSTEM REVIEW SUBCOMMITTEE

Opening date: Monday, September 5, 1994 (10 a.m.)

Closing date: Friday, September 16, 1994

I.	Section IV: Chapter 20	Doc. 38.758
II.	Section V: Chapters 25 to 27	Doc. 38.282
III.	Section VI: Chapters 28 to 38	Doc. 38.283
IV.	Section VII: Chapters 39 and 40	Doc. 38.284
V.	Section X and Chapters 47, 48 and 49	Doc. 38.287
VI.	Amendments to the Explanatory Notes consequential upon the objections regarding the Article 16 Recommendation of July 6, 1993—Chapters 61 and 62	Doc. 38.759
VII.	Section XIII: Chapters 68 to 70	Doc. 38.291
VIII.	Section XIV: Chapter 71	Doc. 38.292
IX.	Section XV and Chapters 72 to 76 and 78 to 62	Doc. 38.293
X.	Section XVII and Chapters 87 and 88	Doc. 38.296
XI.	Section XX: Chapters 95 and 95	Doc. 38.298
XII.	Section XXI: Chapter 97	Doc. 38.299

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 12, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF SILK BOXER SHORTS

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of silk boxer shorts. Notice of the proposed revocation was published June 1, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 22.

EFFECTIVE DATE: This decision is effective for merchandise entered, or withdrawn from warehouse, for consumption on or after September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 1, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 22, proposing to revoke New York Ruling Letter (NYRL) 890405, issued October 22, 1993 by the Area Director of Customs, New York Seaport, concerning the tariff classification of silk boxer shorts in Heading 6203 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for breeches and shorts, among other articles. One comment was received in response to the proposed revocation.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the

North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), this notice advises interested parties that Customs is revoking NYRL 890405 to reflect proper classification of the silk boxer shorts in subheading 6207.19.0020, HTSUSA, which provides for men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: underpants and briefs: of other textile materials, other: containing 70 percent or more by weight of silk or silk waste. Our response to the comment received is reflected in the ruling revoking NYRL 890405 which is set forth in Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: July 8, 1994

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 8, 1994.

CLA–2 CO:R:C:T 956360 CC
Category: Classification
Tariff No. 6207.19.0020

ELEANORE KELLY-KOBAYASHI
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: Revocation of NYRL 890405; classification of silk boxer shorts; classifiable in Heading 6207.

DEAR MS. KELLY-KOBAYASHI:

In New York Ruling Letter (NYRL) 890405, dated October 22, 1993, we issued a ruling to you, classifying silk boxer shorts in Heading 6203 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have had the occasion to review this ruling and find that it is in error.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published June 1, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 22.

Facts:

Two samples of the subject merchandise were available for examination. This merchandise, designated as style number 983, is men's 100 percent woven silk boxer style shorts. Both samples feature an enclosed waistband, a placketed fly front opening, and hemmed leg openings. One of the samples, a size S, is primarily red with a logo of the San Francisco 49ers printed on the shorts. It has side seams measuring 15 inches, a relaxed waist mea-

suring 13 inches across, and a single leg opening measuring 12 inches. This sample also has a fly opening with a single button closure. The second sample, a size L, is primarily black with depictions of red lips covering the shorts. It has side seams measuring 16½ inches, a relaxed waist measuring 15 inches across, and a single leg opening measuring 13½ inches.

Issue:

Whether the merchandise at issue is classifiable as shorts of Heading 6203, HTSUSA, or as underwear of Heading 6207, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6203, HTSUSA, provides for men's or boys' breeches and shorts, among other articles. Heading 6207, HTSUSA, provides for men's or boys' underpants and briefs, among other articles.

Generally, boxer shorts are classifiable as underwear, sleepwear or shorts on a case-by-case basis. See, e.g., Headquarters Ruling Letter (HRL) 953005, dated December 24, 1992, and HRL 087940, dated September 16, 1991. We have recognized the following features as indicative of non-underwear garments:

1. Fabric weight greater than 4.2 ounces per square yard;
2. An enclosed or turned over waistband;
3. Lack of a fly or lining;
4. A single leg opening greater than the relaxed waist;
5. The presence of belt loops, inner or outer pockets or pouches;
6. Multiple snaps at the fly opening (not including the waistband), or button or zipper fly closures);
7. The side length of a size medium should not exceed 17 inches.

We have ruled that boxer shorts that contain more than one of the features listed above create a presumption that the merchandise is not underwear. This presumption, however, is rebuttable where it can be shown that additional criteria such as marketing or other physical attributes are determinative.

Three of the above factors have been listed in support that the subject merchandise is shorts: an enclosed waistband, a fly closure, and the side length. There is only a single fly closure and the side length is under 17 inches. consequently, the merchandise at issue contains only one of the features listed above, an enclosed waistband. The subject merchandise, therefore, is presumptively underwear.

You claimed in your submission for the original ruling that the silk boxers at issue are marketed as shorts. You state that the importer sells this merchandise to the official licensee of among others, the National Football League and the National Basketball Association. This licensee sells the silk boxers to sporting goods stores, with the garments carrying the logos of various collegiate and professional sports teams. These garments, you state, have a hang tag identifying this merchandise as silk shorts. You enclosed photographs in which the shorts are displayed in a sporting goods store presented with a football jersey in one instance and a basketball jersey in another.

We do not believe that the marketing and physical attributes of the merchandise at issue rebut the presumption that it is underwear. The available samples are too flimsy and lightweight to be worn as outerwear. In addition, one of the available samples has no fly closure which is also indicative of underwear. Concerning the marketing, a hangtag affixed to one of the samples reads "bottom drawers TOPS IN BOTTOMS." It also depicts a cartoon of a dog standing on its hind legs wearing only an undershirt and boxers. Thus this piece of marketing also indicates that this merchandise is underwear. The marketing is at best conflicting and, along with the physical attributes, does not rebut the presumption that the subject merchandise is underwear. Consequently, the merchandise at issue is classifiable as underwear of Heading 6207.

In a letter dated June 30, 1994, you made a claim for detrimental reliance on NYRL 890405. The detrimental reliance regulations, contained in 19 CFR 177.9, allow a maximum delay of the effective date of a ruling of 90 days. Section 625 delays the effective date of a ruling approximately 120 after publication of the proposed revocation in the Customs Bulletin. Accordingly, we will not consider your claim for detrimental reliance.

Holding:

The merchandise at issue is classified under subheading 6207.19.0020, HTSUSA, which provides for men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: underpants and briefs: of other textile materials, other: containing 70 percent or more by weight of silk or silk waste. The rate of duty is 11.2 percent ad valorem, and the textile category is 752.

Accordingly, NYRL 890405, dated October 22, 1993, is hereby revoked.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, Visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF THE "TROLI" MODULE FOR PERSONAL COMPUTER LOCAL AREA NETWORKING

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of the "TROLI" Module for personal computer Local Area Networking ("LAN"). Notice of the proposed revocation was published on June 1, 1994, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Matthew Riley, Metals and Machinery Classification Branch, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 1, 1994, customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 22, proposing to revoke NY 869010, issued on

December 18, 1991, concerning the tariff classification of the TROLI (Token Ring Optimized Interface) Module for personal computer Local Area Networking ("LAN"), which was held to be classifiable under subheading 8517.82.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other telegraphic apparatus. No comments were received.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter "section 625"), this notice advises interested parties that Customs is revoking NY 869010 to reflect the proper classification of the product under subheading 8471.99.15, HTSUS, which provides for automatic data processing machine (ADP) control or adapter units. Headquarters Ruling Letter 955907, revoking NY 869010, is set forth in Attachment A to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: July 6, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 6, 1994.

CLA–2 CO:R:C:M 955907 MBR
Category: Classification
Tariff No. 8471.99.15

MS. SUSAN KOHN ROSS
ROSS & ASSOCIATES
5777 West Century Blvd.
Suite 520
Los Angeles, CA 90045–5659

Re: Reconsideration of NY 869010; "TROLI" Module; ADP Unit; Control or Adapter Unit; HQ 951331; HQ 952659.

DEAR MS. ROSS:

This is in response to your letter of February 14, 1994, on behalf of Pulse Engineering, Inc., requesting reconsideration of NY 869010, dated December 18, 1991, issued by the Area Director of Customs, New York Seaport, to a Customs broker on behalf of Pulse Engineering, Inc., regarding the classification of the "TROLI" Module for Local Area Networking ("LAN"), under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The "TROLI" Module (Token Ring optimized Interface) is a module that is mounted on a Network Interface Board "NIB" to provide an analog connection between a Texas

Instruments CoMMprocessor and the connector used to transmit and receive encoded signals over either 150 Ohm standard twisted pair ("STP") cable or 100 Ohm UTP cable. The TROLI module performs the major portion of the local area networking ("LAN") interface board and facilitates the encoding and decoding of information moving to and from the personal computer ("PC"). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1933) (hereinafter "section 625"), notice of the proposed revocation of NY 869010 was published June 1, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 22. No comments were received. Our decision in this matter is set forth below.

Issue:

What is the classification of the "TROLI" Module, under the HTSUS?

Law and Analysis:

NY 869010, dated December 18, 1991, held that the instant TROLI modules were classified in subheading 8517.82.00, HTSUS, which provides for telegraphic apparatus.

Since the HTSUS came into effect there has been a great deal of controversy regarding the classification of LAN boards. However, there is no clear classification guidance from either the HTSUS or the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), primarily due to the technological advancements in this area.

However, in HQ 951331, dated September 18, 1992, (as modified by HQ 952659, dated October 7, 1992), we cited Legal Note 5(B) to chapter 84, HTSUS, which provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

We agree that the TROLI Modules are essential to the ADP systems with which they are integrated because they process and format the data of the computers they serve.

In HQ 951331 we also cited the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), pages 1299–1300, which describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.
>
> Apart from central processing units and input and output units, examples of such units include:
>
> (4) **Control and adaptor units** such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, emote terminals, etc.

It is our opinion that rather than "processing" being the principal function of such Local Area Network ("LAN") and Wide Area Network ("WAN") equipment, their principal function is, in fact, to effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving "control" and "adaption" functions. In HQ 951331 it was our opinion that the LAN equipment did not have the essential character of control or adapter units because of its processing capabilities. However, it has come to our attention that the LAN equipment's processing capabilities are designed principally to perform the control and adaption functions, as described by the ENs.

Holding:

The instant TROLI Modules are classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free. NY 869010, dated December 18, 1991, is revoked.

In accordance with section 625, this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A SNEAKER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, (1993), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a sneaker. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before August 26, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W. Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Metals and Machinery Classification Branch, (202–482–7030).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057 (1993), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a sneaker.

In DD 890452, issued on October 19, 1993, by the District Director of Customs, Portland, Oregon, a "Highlander" sneaker having a canvas

upper, rubber sole, and a 1.5 centimeter wide rubber foxing-like band molded at the sole and overlapping the upper was classified under subheading 6404.19.60, Harmonized Tariff Schedule of the United States (HTSUS), as footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials, other, valued over $3 but not over $6.50/pair, having soles (or midsoles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the sole with an adhesive), the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper * * *. The ruling letter is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that DD 890452 erroneously classified the "Highlander" sneaker under subheading 6404.19.60, HTSUS, because the presence of a foxing-like band on the shoe precludes it from classification thereunder.

Customs intends to modify DD 890452 to reflect the proper classification of this footwear under subheading 6404.11.70, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials, footwear with outer soles of rubber or plastics, tennis shoes, basketball shoes, gym shoes, training shoes and the like, having a foxing-like band and valued over $3 but not over $6.50/pair.

Before taking this action, consideration will be given to any written comments timely received. Proposed HQ 956466 modifying DD 890452 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: July 6, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Portland OR, October 19, 1993.

CLA–2–64:HS:CS FNIS D19 890452
Category: Classification
Tariff No. 6403.19.35 and 6403.19.60

MARTHA J. WALDNER, IMPORT SUPERVISOR
UNITRANS INTERNATIONAL CORPORATION
709 South Hindry Ave.
Inglewood, California 90301

DEAR MS. WALDNER:

In your letter dated September 27, 1993, you request classification of two articles of footwear, an espadrille produced in Bangladesh, and a Highlander sneaker produced in Portugal.

The espadrille has an upper of woven man-made textile (shown as 30–40% by weight), and a sole of rubber (shown as 60–70% by weight). The upper is open at the tow and heal, with three-eyelet construction and raffia laces. The sneaker, in the version for which the ruling is requested, will have a canvas upper (unlike the sample provided, which has a suede upper), rubber sole, and a 1.5 centimeter wide rubber foxing-like band molded at the sole and overlapping the upper.

The applicable subheading for the espadrille will be 6404.19.35, which provides for footwear with outer soles of rubber and uppers of textile materials, over 10% by weight of rubber or plastics. The rate of duty is 37.5% ad valorem. The applicable subheading for the sneaker will be 6404.19.60, which provides for footwear with outer soles of rubber and uppers of textile materials, valued over $3.00 but not over $6.50 per pair. The rate of duty is 37.5% ad valorem.

We note that the samples are not marked properly with the country of origin. Therefore, if imported as such, the shoes will not meet the country of origin marking requirements of 19 U.S.C. 1304.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the documents are filed without a copy, this ruling should be brought to the attention of the Customs officers handling the transaction.

THOMAS W. HARDY,
District Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:M 956466 DFC
Category: Classification
Tariff No. 6404.11.70

MS. MARTHA J. WALDNER, IMPORT SUPERVISOR
UNITRANS INTERNATIONAL CORPORATION
709 South Hindry Ave.
Inglewood, California 90301

Re: Footwear; Sneaker, Highlander; Band, foxing-like DD 890452 modified.

DEAR MS. WALDNER:

This is in reference to District Ruling Letter (DD) 890452 dated October 19, 1993, addressed to you, concerning, in part, the tariff classification of a sneaker produced in Portugal. We have reviewed that ruling and determined that with respect to the sneaker, it is in error.

Facts:

The merchandise, identified as a "Highlander" sneaker, is similar to a training shoe. It has a canvas upper, rubber sole, and a 1.5 centimeter wide rubber foxing-like band molded at the sole and overlapping the upper.

In DD 890452 Customs ruled that the "Highlander" sneaker is classifiable under subheading 6404.19.60, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials, other, valued over $3 but not over $6.50/pair, having soles (or midsoles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the sole with an adhesive), the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper * * *. The applicable rate of duty for this provision is 37.5% *ad valorem*.

Issue:

Does the presence of a foxing-like band on the sneaker preclude its classification under subheading 6404.19.60, HTSUS?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to [the remaining GRI's taken in order)." In other words, classification is governed first by the terms of the headings and any relative section or chapter notes.

Classification of the sneaker under subheading 6404.19.60, HTSUS, was in error because, by the terms of this subheading, footwear having a foxing-like band is specifically excluded from classification thereunder.

Additional U.S. Note 2, HTSUS, which is relevant here, reads as follows:

> For the purposes of this chapter, the term *'tennis shoes, basketball shoes, gym shoes, training shoes and the like'* covers athletic footwear other than sports footwear (as defined in subheading note 1 above), whether or not principally used for such athletic games or purposes.

Inasmuch as the "Highlander" sneaker is a training shoe, it is our opinion that it is classifiable under subheading 6404.11.70, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials, footwear with outer soles of rubber or plastics, tennis shoes, basketball shoes, gym shoes, training shoes and the like, having a foxing-like band and valued over $3 but not over $6.50/pair.

Holding:

The "Highlander" sneaker is dutiable at the rate of 90 cents per pair plus 37.5% ad valorem under subheading 6404.11.70, HTSUS.

Accordingly, DD 890452 is modified to reflect the correct classification of the "Highlander" sneaker.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF THE TRAVEL 'N TRUNDLE YOUTH BED

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of a youth bed. Notice of the proposed modification was published on June 1, 1994, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This decision is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 26, 1994.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Office of Regulations and Rulings, Metals and Machinery Classification Branch, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 1, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 22, proposing to modify New York Ruling Letter (NY) 892445, issued on December 7, 1993, which held the "Travel 'N Trundle Youth Bed" to be classifiable as a good put up in a set for retail sale under subheading 9403.70.80, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: [o]ther furniture and parts thereof: [f]urniture of plastics: [o]ther. Because the youth bed was classified as a set, its textile components were subject to textile quota requirements. The only comments received were from counsel for the importer in support of modifying NY 892448.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Cus-

toms is modifying NY 892448 to reflect the proper classification of the product as a composite good under subheading 9403.70.80, HTSUS. Because the youth bed is now classifiable as a composite good, its textile components are not subject to textile quota requirements. Headquarters Ruling Letter (HQ) 956021 modifying NY 892448 is set forth in Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: July 8, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 8, 1994.
CLA–2 CO:R:C:M 956021 DWS
Category: Classification
Tariff No. 9403.70.80

MR. JOHN M. PETERSON
NEVILLE, PETERSON & WILLIAMS
2300 N Street, N.W.
Washington, DC 20037

Re: Modification of NY 892448; Travel 'N Trundle Youth Bed; GRIs 2(a) and 3(b); Explanatory Notes 2(a)(V) and (VII), and 3(b)(VIII), (IX) and (X); Composite Good; Set; HQ 954180.

DEAR MR. PETERSON:

This is in response to your letter of March 4, 1994, on behalf of Regal + Lager, Inc., requesting reconsideration of NY 892448, dated December 7, 1993, which dealt with the classification of the "Travel 'N Trundle Youth Bed" under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 703–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NY 892448 was published on June 1, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 22.

Facts:

The merchandise consists of the "Travel 'N Trundle Youth Bed" portable youth bed, imported in a complete and disassembled condition. It is comprised of a nylon bed, a vinyl-covered polyethylene foam mattress, a fitted cotton or cotton/polyester sheet (specially designed to cover the mattress), rectangular side sections of polyethylene foam, and a nylon carrying case. The bed is designed to be disassembled and rolled up for transportation and storage in the carrying case. It is assembled by placing the side panels in the bed pockets. The pockets then are turned down, to be perpendicular to the bed surface, and held in that position by "Velcro" attachments.

Issues:

Whether the youth bed, imported in a complete and disassembled condition, is classifiable as if imported in an assembled condition.

Whether the youth bed is a composite good or goods put up in a set for retail sale.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In NY 892448, the subject youth bed was held to be classifiable as other furniture of plastics under subheading 9403.70.80, HTSUS, as goods put up in a set for retail sale. Because it was held that the bed was a set, the textile components of the bed were subject to textile quota requirements. If the youth bed had been held to be a composite good, the textile quota requirements would not have applied to the textile components.

There is no dispute that the youth bed is classifiable under subheading 9403.70.80, HTSUS. However, the manner in which this result is reached must be resolved.

First, because the youth bed is imported in a complete and unassembled condition, we must determine whether it is to be classifiable as if imported in an assembled condition. GRI 2(a) states that:

> [a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 2(a)(v) (p. 2) states that:

> [t]he second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

In part, Explanatory Note 2(a)(VII) (p. 2) states that:

> [f]or the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only simple assembly operations are involved.

We are satisfied that the youth bed, imported in a complete and unassembled condition, imparts the essential character of an assembled youth bed. Also, we find that the youth bed is presented unassembled for reasons such as convenience of packing, handling, or transport, and that the youth bed will be assembled by means of simple fixing devices.

We must now determine whether the youth bed is a composite good or goods put up in a set for retail sale. GRI 3(b) states that:

> [m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In part, Explanatory Note 3(b)(IX) (p. 4) states that:

> [f]or the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts * * *.

For classification purposes, it is our position that, based upon the above definition, the youth bed constitutes a composite good. The bed consists of separable components which are adapted one to the other and together form a whole which would not normally be offered for sale in separate parts. *See* HQ 954180, dated July 21, 1993.

Explanatory Note 3(b)(X) (p. 4) states that:

> [f]or the purpose of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The youth bed is not goods put up in a set for retail sale because it does not consist of separately identifiable articles classifiable in different headings under the HTSUS. The components of the bed are not articles which could be sold separately and are put up to meet a specific activity. *See* the exemplars to Explanatory Note 3(b)(X). The bed components are parts adapted one to another to form a youth bed. The parts have little utility unless they are used together as a single article of commerce.

Explanatory Note 3(b) (VIII) (p. 4) states that:

> [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

It is our position that the essential character of the youth bed is imparted by its plastic components. They give the bed its support and makes up the major portion of its weight. The bed also has the appearance of being plastic, with additions of other material.

Therefore, we find that the youth bed is a composite good classifiable under subheading 9403.70.80, HTSUS.

Holding:

The "Travel 'N Trundle Youth Bed" is a composite good classifiable under subheading 9403.70.80, HTSUS, as other furniture of plastics. Textile quota requirements do not apply to the textile components of the bed. Also, the youth bed, imported in a complete and unassembled condition, imparts the essential character of an assembled bed.

NY 892448 is modified to reflect the reasoning in this ruling.

In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF THE FOLD-N-GO TRAVEL CRIB AND PLAY YARD

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of a play yard. Notice of the proposed modification was published on June 1, 1994, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This decision is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 26, 1994.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Office of Regulations and Rulings, Metals and Machinery Classification Branch, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 1, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 22, proposing to modify New York Ruling Letter (NY) 885035, issued on May 4, 1993, which held the "Fold-N-Go Travel Crib and Play Yard" to be classifiable as a good put up in a set for retail sale under subheading 9403.80.60, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: [f]urniture of other materials, including cane, osier, bamboo or similar materials: [o]ther. Because the play yard was classified as a set, its textile components were subject to textile quota requirements. The only comments received were from counsel for the importer in support of modifying NY 885035.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY 885035 to reflect the proper classification of the product as a composite good under subheading 9403.80.60, HTSUS. Because the play yard is now classifiable as a composite good, its textile components are not subject to textile quota requirements. Headquarters Ruling Letter (HQ) 956018 modifying NY 885035 is set forth in Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: July 8, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 8, 1994.

CLA–2 CO:R:C:M 956018 DWS
Category: Classification
Tariff No. 9403.80.60

MR. JOHN M. PETERSON
NEVILLE, PETERSON & WILLIAMS
2300 N Street, N.W.
Washington, DC 20037

Re: Modification of NY 885035; Fold-N-Go Travel Crib and Play Yard; GRIs 2(a) and 3(b); Explanatory Notes 2(a) (V) and (VII), and 3(b)(VIII), (IX) and (X); Composite Good; Set; HQ 954180.

DEAR MR. PETERSON:

This is in response to your letter of March 22, 1994, on behalf of Century Products Inc., requesting reconsideration of NY 885035, dated May 4, 1993, which dealt with the classification of the "Fold-N-Go Travel Crib and Play Yard" under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of NY 885035 was published on June 1, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 22.

Facts:

The merchandise consists of the "Fold-N-Go Travel Crib and Play Yard", imported in a complete and unassembled condition. It is comprised of four plastic legs, four sides covered with nylon fabric, and a bottom vinyl pad. The merchandise is sturdy, has a lightweight design that sets up easily, and needs no tools for assembly. A protective pad, which is fitted with a cotton sheet, unwraps to become a soft cushion nap pad. The padded rails are soft for the protection of a baby. Mesh panels allow parents to check on the baby while it is playing.

Issues:

Whether the play yard, imported in a complete and unassembled condition, is classifiable as if imported in an assembled condition.

Whether the play yard is a composite good or goods put up in a set for retail sale.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In NY 885035, the subject play yard was held to be classifiable as other household furniture of other materials under subheading 9403.80.60, HTSUS, as goods put up in a set for retail sale. Because it was held that the play yard was a set, its textile components were subject to textile quota requirements. If the play yard had been held to be a composite good, the textile quota requirements would not have applied to the textile components.

There is no dispute that the play yard is classifiable under subheading 9403.80.60, HTSUS. However, the manner in which this result is reached must be resolved.

First, because the play yard is imported in a complete and unassembled condition, we must determine whether it is to be classifiable as if imported in an assembled condition. GRI 2(a) states that:

> [a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although

not dispositive, are to be used to determine the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 2(a)(V) (p. 2) states that:

> [t]he second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

In part, Explanatory Note 2(a)(VII) (p. 2) states that:

> [f]or the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only simple assembly operations are involved.

We are satisfied that the play yard, imported in a complete and unassembled condition, imparts the essential character of an assembled play yard. Also, we find that the play yard is presented unassembled for reasons such as convenience of packing, handling, or transport, and that the play yard will be assembled by means of simple fixing devices.

We must now determine whether the play yard is a composite good or goods put up in a set for retail sale. GRI 3(b) states that:

> [m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In part, Explanatory Note 3(b)(IX) (p. 4) states that:

> [f]or the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts * * *.

For classification purposes, it is our position that, based upon the above definition, the play yard constitutes a composite good. The play yard consists of separable components which are adapted one to the other and together form a whole which would not normally be offered for sale in separate parts. *See* HQ 954180, dated July 21, 1993.

Explanatory Note 3(b)(X) (p. 4) states that:

> [f]or the purpose of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, *prima facie,* classifiable in different headings * * *;
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The play yard is not goods put up in a set for retail sale because it does not consist of separately identifiable articles classifiable in different headings under the HTSUS. The components of the play yard are not articles which could be sold separately and are put up to meet a specific activity. *See* the exemplars to Explanatory Note 3(b)(X). The play yard components are parts adapted one to another to form a play yard. The parts have little utility unless they are used together as a single article of commerce.

Explanatory Note 3(b) (VIII) (p. 4) states that:

> [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

It is our position that the essential character of the play yard is imparted by its vinyl components. The play yard has the appearance of being vinyl, with additions of other material.

Therefore, we find that the play yard is a composite good classifiable under subheading 9403.80.60, HTSUS.

Holding:

The "Fold-N-Go Travel Crib and Play Yard" is a composite good classifiable under subheading 9403.80.60, HTSUS, as other household furniture of other materials. Textile quota requirements do not apply to the textile components of the play yard. Also, the play yard, imported in a complete and unassembled condition, imparts the essential character of an assembled play yard.

NY 885035 is modified to reflect the reasoning in this ruling.

In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF LIQUID SOAP AND/OR LOTION DISPENSERS

ACTION: Notice of proposed revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke rulings pertaining to the tariff classification of liquid soap and/or lotion dispensers. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before August 26, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Metals and Machinery Classification Branch, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke rulings pertaining to the tariff classification of liquid soap and/or lotion dispensers.

In Headquarters Ruling Letter (HQ) 087486, issued on November 6, 1990, plastic soap and lotion dispensers were classified under subheading 3925.90.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for builders' wares of plastics, not elsewhere specified or included. HQ 087486 is set forth in Attachment A to this document.

In HQ 950881, issued on March 30, 1992, a battery operated, automatic soap dispenser was classified under subheading 8413.50.00, HTSUS, which provides for reciprocating positive displacement pumps. HQ 950881 is set forth in Attachment B to this document.

In New York Ruling Letter (NY) 877878, issued on October 2, 1992, a hand-operated liquid soap dispenser, and in NY 889286, issued on September 15, 1993, a dispenser for soaps, hand lotions and other liquids, were classified under subheading 8413.20.00, HTSUS, which provides for liquid hand pumps. NY 877878 is set forth in Attachment C to this document. NY 889286 is set forth in Attachment D to this document.

Customs Headquarters is of the opinion that these dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS, and intends to revoke HQ 087486, HQ 950881, NY 877878 and NY 889286 to reflect the proper classification of the dispensers under this subheading. Proposed HQ 956530 revoking HQ 087486 is set forth in Attachment E to this document. Proposed HQ 956079 revoking HQ 950881 is set forth in Attachment F to this document. Proposed HQ 956522 revoking NY 877878 is set forth in Attachment G to this document. Proposed HQ 956529 revoking NY 889286 is set forth in Attachment H to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: July 6, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., November 6, 1990.

CLA–2 CO:R:C:G 087486 WAW
Category: Classification
Tariff No. 3925.90.0000

MR. ROGER D. COMSTOCK
BETTER LIVING PRODUCTS, INC.
2255 N. University Pkwy
Suite 15
Provo, Utah 84604

Re: Reconsideration of New York Ruling Letter (NYRL) 852441; Plastic Soap and Lotion Dispenser; Builders' ware of plastics; Toilet articles of plastics.

DEAR MR. COMSTOCK:

This letter is in response to your inquiry, dated May 29, 1990, concerning the classification of a plastic soap and lotion dispenser under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No sample was submitted along with your request; however, descriptive literature of the product was provided for our review.

Facts:

The subject merchandise is described as a bathtub and shower organizer which is designed to dispense soaps and lotions. There are four different models which the importer has requested that we reconsider in This ruling letter. The "Dispenser" model contains four separate compartments which hold the various liquids. The "Dispenser II" model is a smaller, two-chambered unit. The "Dispenser Junior" model consists of two versions: a unit for a children's bathroom and a unit designed for a baby's room. The "Dispenser Elite" model is another type of four-chambered model. All of the models are composed of a durable ABS plastic shell. Furthermore, in all of the models, the liquids can be dispensed by pushing the appropriate pump. The dispensers are designed for both permanent and temporary, but secure, installation on bathroom walls. All models are designed to be mounted either by means of screws or with a silicon adhesive.

In NYRL 852441, dated May 18, 1990, Customs classified the bathtub and shower dispensers under subheading 3925.90.0000, HTSUSA. This subheading provides for builders' ware of plastics, not elsewhere specified or included, other. Articles classified under this subheading are subject to a rate of duty of 5.3 percent *ad valorem*. You maintain that the subject merchandise is more properly classified under subheading 3924.90.5000, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics * * * other, dutiable at a rate of 3.4 percent *ad valorem*. In support of your position, you stated the following:

(1) The "Dispenser" is *not a permanent mounted item*, it is designed exclusively for easy removal and relocation;

(2) Although, as we are aware, there are many commercial soap dispensers currently on the market, we have designed the "Dispenser" line *exclusively* for home use.

Issue:

Whether the sample soap and lotion dispensers are classifiable under subheading 3924.90.5000, HTSUSA, as tableware, kitchenware, other household articles and toilet articles, of plastics, or rather under subheading 3925.90.0000, HTSUSA, as builders' ware of plastics, not elsewhere specified or included.

Law and Analysis:

The General Rules of Interpretation (GRI's) set forth the manner in which merchandise is to be classified under the HTSUSA. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's, taken in order.

At first glance, it would appear that the subject merchandise is principally used in the home and should be classified in subheading 3924.90.5000, HTSUSA. However, in view of the recommendations made by the Secretariat of the Customs Cooperation Council in Brussels (hereinafter CCC), the Harmonized System Committee, it is the position of this

office that the sample plastic soap and lotion dispenser which is designed for both permanent and temporary installation, should be classified as a builders' ware of plastics, not elsewhere specified or included, in subheading 3925.90.0000, HTSUSA.

During the Fourth Session of the Harmonized System Committee meeting, which took place on July 31, 1989, the CCC examined the proposals of the European Economic Community (EEC) in order to clarify the scope of Headings 3924 and 3925, HTSUSA. At this session, the Committee discussed, among other things, the classification of towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilet's, and kitchens, designed for fixing to or setting in the wall, taking into account the EEC proposals and the comments and suggestions set forth by the Secretariat. The Committee unanimously agreed with the Secretariat's position that Heading 3924, HTSUSA, (covering tableware, kitchenware, other household articles and toilet articles, of plastics) did not include articles such as plastic tissue dispensers, which are designed for permanently fixing to or setting in the wall. Consequently, the Committee decided to retain the classification of towel rails, towel hooks and similar articles in Heading 3925, HTSUSA, as builders' ware.

Similarly, in Headquarters Ruling Letter (HRL) 087277, dated September 24, 1990, Customs classified a plastic tissue dispenser designed for permanent installation under subheading 3925.90.0000, HTSUSA. In HRL 087277, Customs held that Heading 3924, HTSUSA, which covers tableware, kitchenware, and other household articles and toilet articles of plastics, did not include articles such as towel rails, towel hooks and similar articles, designed for permanently fixing to the wall. In the instant case, the plastic soap and lotion organizer is a toilet article which is designed to store and dispense bathing liquids in the bathtub or shower. Furthermore, even though the importer maintains that these products are not intended to be permanently mounted in the wall, they are designed to be securely fixed to the wall by either screws or strong adhesives. Accordingly, it is our position that the plastic soap and lotion dispensers are the type of articles which the Committee intended to include within Heading 3925, HTSUSA, as builders' ware of plastics, not elsewhere specific or included.

Holding:

Based on the foregoing analysis and HRL 087277, it is the position of this office that the instant plastic soap and lotion dispensers are classified in subheading 3925.90.0000, HTSUSA, which provides for builders' ware of plastics, not elsewhere specified or included, and are subject to a rate of duty of 5.3 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., March 30, 1992.

CLA–2 CO:R:C:M 950881 LTO
Category: Classification
Tariff No. 8413.50.00

MR. KEITH B. NEWFIELD
DIRECTOR OF OPERATIONS
CAREX SYSTEMS INC.
1842 Beacon Street
Brookline, Massachusetts 02146

Re: Automatic Soap Dispenser; 8424; 8543; EN 84.13; EN 84.24; HQ 088350 *revoked.*

DEAR MR. NEWFIELD:

This is in response to your letter requesting the classification of an automatic soap dispenser under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for a response.

Facts:

The article in question is a battery operated, automatic soap dispenser, imported from the People's Republic of China. The unit is comprised of a rectangular-shaped plastic body that internally houses an infrared sensor, a piston-type liquid pump, a solenoid switch, two battery cases, and a module containing a red and green lamp. The infrared sensor, located on the bottom of the dispenser, sends out an infrared beam which reflects back to an electromagnetic solenoid. This beam is broken when a hand is placed under the bottom of the dispenser. This action activates the solenoid, which in turn activates the liquid pump motor, which in turn automatically dispenses liquid soap onto the individual's hand.

Issue:

Whether the automatic soap dispenser is classifiable as a reciprocating positive displacement pump for liquids under heading 8413, HTSUS, as a mechanical appliance for projecting, dispersing or spraying liquids under Heading 8424, HTSUS, or as an electrical machine, having individual functions, not specified or included elsewhere under heading 8543, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI'S) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

The headings at issue are as follows:

8413	Pumps for liquids, whether or not fitted with a measuring device * * *
* * * * * * *	
8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders * * *
* * * * * * *	
8543	Electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter * * *

The Harmonized Commodity Description and Coding System Explanatory Notes [EN] constitute the Customs Co-operation Council's official interpretation of the Harmonized System. While not legally binding, they provide a commentary on the scope of each heading of the Harmonized System, and are thus useful in ascertaining classification under the System. EN 84.13, pg. 1161, states that Heading 8413, HTSUS, excludes appliances for projecting, dispersing or spraying liquids. Thus, if the article in question is described in heading 8424, HTSUS, it cannot be classified under Heading 8413, HTSUS.

In HQ 088350, dated February 11, 1991, a similar infrared controlled automatic soap dispenser was classified under subheading 8543.80.90, HTSUS, which describes other electrical apparatus not specified or included elsewhere. In that ruling, we did not consider the classification of the soap dispenser under either Heading 8413 or 8424, HTSUS. If the soap dispenser can be classified in either Heading 8413 or 8424, HTSUS, it cannot be classified under Heading 8543, HTSUS.

Heading 8424, HTSUS, provides for "[m]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders * * *." EN 84.24, pg. 1188, states that this heading "covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials * * * in the form of a jet, a dispersion (whether or not in drips) or a spray." The ENs list a wide range of appliances that are classifiable under Heading 8424, HTSUS. These articles include the following: fire extinguishers; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; syringes, sprays and powder distributors; irrigation systems; machines for coating various objects with wax; electrostatic painting apparatus; and industrial robots specially designed for projecting, dispersing or spraying liquids or powders.

The fact that an article "dispenses" a liquid does not necessarily mean that it is covered by Heading 8424, HTSUS. The automatic soap dispenser does not spray, project or disperse a liquid, as those terms are commonly defined. It does not throw, cast forward or scatter the liquid. Rather, it merely allows a fixed amount of liquid (soap) to pass through an orifice. While EN 8424, HTSUS, pg. 1188, states that the heading covers machines and appliances that dispense liquids in the form of a dispersion (whether or not in drips), it is our opinion that the article in question is not the type of machine or appliance contemplated by Heading 8424, HTSUS.

EN 84.13, pg. 1159, states that Heading 8413, HTSUS, covers "most machines and appliances for raising or otherwise continuously displacing volumes of liquids * * *, whether they are operated by hand or by any kind of power unit, integral or otherwise." The article in question consists of a large, white plastic body that acts as a holder for the batteries, as well as an infrared sensor and a motor driven pump. The dispenser has a built-in recess for inserting the soap-filled bottle.

The soap dispenser's function is to draw up liquid soap from the reservoir (bottle) and move it through a plastic dispensing tube. When the body and battery holder (the housing for the pump) are removed, a sensor-actuated, motor-driven liquid pump remains. Thus, the article in question is a machine for raising volumes of liquids which is battery operated and sensor-actuated, rather than operated by hand. Therefore, the soap dispenser is classifiable under Heading 8413, HTSUS, specifically under subheading 8413.50.00, HTSUS, which describes other reciprocating positive displacement pumps.

Holding:

The automatic soap dispenser is properly classifiable under subheading 8413.50.00, HTSUS, which provides for "[p]umps for liquids * * * [o]ther reciprocating positive displacement pumps." The corresponding rate of duty for articles of this subheading is 3% *ad valorem.*

Effect on Other Rulings:

HQ 088350, dated February 11, 1991, is revoked pursuant to Section 177.9(d) of the Customs Regulations [19 C.F.R. 177.9(d)].

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., October 2, 1992.

CLA–2–84:S:N:N1:102 877878
Category: Classification
Tariff No. 8413.20.0000

MR. MIKE UNSWORTH
LEP PROFIT INTERNATIONAL, INC.
29225 Airport Drive
Romulus, MI 48174

Re: The tariff classification of a hand operated liquid soap dispenser from England.

DEAR MR. UNSWORTH:

In your letter dated August 26, 1992, on behalf of your client, Brightwell Dispensers Ltd., you requested a tariff classification ruling.

The item in question is a wall-mounted hand soap dispenser. The unit consists of a plastic housing containing a plastic soap reservoir and a simple, piston-type, hand activated dispensing pump. By pressing in on the plunger, soap is moved from the reservoir, though the pump, and ejected out through a plastic nozzle. While noting the submitted letter from the British office of Customs and Excise, it is our opinion that this item is more specifically provided for in the tariff in a heading other than that covering "machines and mechanical appliances having individual functions, not specified or included elsewhere" (subheading 8479).

The applicable subheading for the soap dispenser will be 8413.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for hand pumps for liquids. The rate of duty will be 3 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., September 15, 1993.
CLA–2–84:S:N:N3:102 889286
Category: Classification
Tariff No. 8413.20.0000

MS. KAREN GRIDER
GLOBAL OEM CORPORATION
1755 Park Street, Suite 330
Naperville, Illinois 60563

Re: The tariff classification of soap and lotion dispenser pump from China.

DEAR MS. GRIDER:

In your letter dated August 10, 1993 you requested a tariff classification ruling.

The item at hand is the model LD 100C countertop liquid dispenser for dishwashing and hand soaps, hand lotions or other liquids. It consists of a chrome-plated combination head and pump assembly, a threaded mounting body and nut, and a plastic storage bottle. The unit is normally mounted onto a sink or kitchen countertop with the pump assembly showing and the bottle underneath. The unit discharges liquid by manually pumping the head assembly up and down. We consider the device to be essentially a hand operated liquid pump.

The applicable subheading for the soap dispenser will be 8413.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for hand pumps for liquids, other than those fitted with a measuring device. The rate of duty will be 3 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.
CLA–2 CO:R:C:M 956530 LTO
Category: Classification
Tariff No. 8424.89.00

MR. ROGER D. COMSTOCK
BETTER LIVING PRODUCTS, INC.
2255 N. University Parkway
Suite 15
Provo, Utah 84604

Re: Plastic Soap and Lotion Dispenser; HO 087486 *revoked;* chapter 39, note 2(o); heading 3925; heading 8413; EN 84.13; EN 84.24.

DEAR MR. COMSTOCK:

This is in reference to HQ 087486, issued to you on November 6, 1990, concerning the classification of plastic soap and lotion dispensers under the Harmonized Tariff Schedule of the United States (HTSUS). Based upon a further review of this matter, we have reconsidered HQ 087486.

Facts:

The articles in question are four models of plastic soap and lotion dispensers. The models are described as follows: the "Dispenser" and "Dispenser Elite" contain four separate

compartments which hold the various liquids. The "Dispenser II" is a smaller, two-chambered unit. The "Dispenser Junior" consists of two versions, one for a children's bathroom and one for a baby's room. All of the models are composed of a durable ABS plastic shell. Furthermore, in all of the models, the liquids can be dispensed by pushing the appropriate pump. The dispensers are designed for both permanent and temporary, but secure, installation to bathroom walls.

In HQ 087486, Customs classified the soap and lotion dispensers as builders' wares of plastics under subheading 3925.90.00, HTSUS, rather than as a mechanical appliance for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Issue:

Whether plastic soap and lotion dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI'S) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

The headings at issue are as follows:

3925	Builders' wares of plastics, not elsewhere specified or included
* * * * * * *	
8413	Pumps for liquids, whether or not fitted with a measuring device * * *
* * * * * * *	
8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders * * *

Note 2(o) to chapter 39, HTSUS, states that the chapter does not cover articles of section XVI (machines and mechanical or electrical appliances). Therefore, if the soap and lotion dispensers are classifiable under a chapter 84 or 85 heading, they cannot be classified under heading 3925, HTSUS.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Co-operation Council's official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 84.13, pg. 1161, states that heading 8413, HTSUS, excludes appliances for projecting, dispersing or spraying liquids. Thus, if the articles in question are described in heading 8424, HTSUS, they cannot be classified under heading 8413, HTSUS.

EN 84.24, pg. 1188, states that beading 8424, HTSUS, "covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials * * *. In the form of a jet, a dispersion (whether or not in drips) or a spray." The fact that an article "dispenses" a liquid does not necessarily mean that it is covered by heading 8424, HTSUS. For an article to be covered by this heading, it must either project, disperse or spray that liquid.

The dispensers are not simply pumps—they are devices that incorporate pumps. However, unlike an appliance incorporating a metered pump, which dispenses a liquid in a fixed amount, the plastic soap and lotion dispensers do, in fact, spray, project or disperse a liquid, as those terms are commonly defined. Accordingly, the dispensers are covered by the terms of heading 8424, HTSUS, and are classifiable under subheading 8424.89.00, HTSUS.

Holding:

The plastic soap and lotion dispensers are classifiable under subheading 8424.89.00, HTSUS, which provides for other mechanical appliances for projecting, dispersing or spraying liquids. The corresponding rate of duty for articles of this subheading is 3.7% *ad valorem.*

Effect on Other Rulings:

HQ 087486, dated November 6, 1990, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:M 956079 LTO
Category: Classification
Tariff No. 8424.89.00

MR. KEITH B. NEWFIELD
DIRECTOR OF OPERATIONS
CAREX SYSTEMS INC.
1842 Beacon Street
Brookline, Massachusetts 02146

Re: Automatic Soap Dispenser; HQ 950881 *revoked;* heading 8413; EN 84.13; EN 84.24.

DEAR MR. NEWFIELD:

This is in reference to HQ 950881, issued to you on March 30, 1992, concerning the classification of an automatic soap dispenser under the Harmonized Tariff Schedule of the United States (HTSUS). Based upon a further review of this matter, we have reconsidered HQ 950881.

Facts:

The article in question is a battery operated, automatic soap dispenser, imported from the People's Republic of China. The unit is comprised of a rectangular-shaped plastic body that internally houses an infrared sensor, piston-type pump, solenoid switch, two battery cases, and a module containing a red and green lamp. The infrared sensor, located on the bottom of the dispenser, sends out an infrared beam which reflects back to an electromagnetic solenoid. This beam is broken when an individual's hand is placed under the bottom of the dispenser. This action activates the solenoid, which in turn activates the liquid pump motor, which in turn automatically dispenses liquid soap onto the individual's hand.

In HQ 950881, Customs classified the automatic soap dispenser as a reciprocating positive displacement liquid pump under subheading 8413.50.00, HTSUS, rather than as a mechanical appliance for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Issue:

Whether automatic soap dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

The headings at issue are as follows:

8413	Pumps for liquids, whether or not fitted with a measuring device * * *
*	* * * * * * *
8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Co-operation council's official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 84.13, pg. 1161, states that heading 8413, HTSUS, excludes appliances for projecting, dispersing or spraying liquids. Thus, if the article in question is described in heading 8424, HTSUS, it cannot be classified under heading 8413, HTSUS.

EN 84.24, pg. 1188, states that heading 8424, HTSUS, "covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials * * * in the form of a jet, a dispersion (whether or not in drips) or a spray." The fact that an article "dispenses" a liquid does not necessarily mean that it is covered by heading 8424, HTSUS. For an article to be covered by this heading, it must either project, disperse or spray that liquid.

In HQ 950881, we held that a device that "merely" allows a fixed amount of liquid (soap) to pass through an orifice * * * is not the type of machine or appliance contemplated by Heading 8424, HTSUS." While we adhere to this conclusion—that the dispensing of a liquid in a fixed amount is not a projection, dispersion or spray—we erroneously believed that the automatic soap dispenser in question dispensed a fixed amount of liquid. In fact, the automatic soap dispenser would continuously project soap as long as an individual's hand remained underneath the sensor.

The soap dispenser is not simply a pump—it incorporates one. However, unlike an appliance incorporating a metered pump, the soap dispenser does, in fact, spray, project or disperse a liquid, as those terms are commonly defined. Accordingly, the soap dispenser is classifiable under subheading 8424.89.00, HTSUS.

Holding:

The automatic soap dispenser is classifiable under subheading 8424.89.00, HTSUS, which provides for other mechanical appliances for projecting, dispersing or spraying liquids. The corresponding rate of duty for articles of this subheading is 3.7% *ad valorem*.

Effect on Other Rulings:

HQ 950881, dated March 30, 1992, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:M 956522 LTO
Category: Classification
Tariff No. 8424.89.00

MR. MIKE UNSWORTH
LEP PROFIT INTERNATIONAL, INC.
29225 Airport Drive
Romulus, Michigan 48174

Re: Hand-operated Liquid Soap Dispenser; NY 877878 *revoked;* heading 8413; EN 84.13; EN 84.24.

DEAR MR. UNSWORTH:

This is in reference to NY 877878, issued to you on October 2, 1992, concerning the classification of a hand-operated liquid soap dispenser under the Harmonized Tariff Schedule of the United States (HTSUS). Based upon a further review of this matter, we have reconsidered NY 877878.

Facts:

The article in question is a wall-mounted, hand-operated soap dispenser. The unit consists of a plastic housing containing a plastic soap reservoir and a simple, piston-type, hand-activated dispensing pump. By pressing in on the plunger, soap is moved from the reservoir through the pump, and ejected out through a plastic nozzle.

In NY 877878, Customs classified the hand-operated liquid soap dispenser as a liquid hand pump under subheading 8413.20.00, HTSUS, rather than as a mechanical appliance for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Issue:

Whether hand-operated liquid soap dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

The headings at issue are as follows:

8413 Pumps for liquids, whether or not fitted with a measuring device * * *

* * * * * * *

8424 Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Co-operation Council's official interpretation of the Harmonized System. While not legally binding, the Ens provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 84.13, pg. 1161, states that heading 8413, HTSUS, excludes appliances for projecting, dispersing or spraying liquids. Thus, if the articles in question are described in heading 8424, HTSUS, they cannot be classified under heading 8413, HTSUS.

EN 84.24, pg. 1188, states that heading 8424, HTSUS, "covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials * * * in the form of a jet, a dispersion (whether or not in drips) or a spray." The fact that an article "dispenses" a liquid does not necessarily mean that it is covered by heading 8424, HTSUS. For an article to be covered by this heading, it must either project, disperse or spray that Liquid.

The dispensing of a liquid in a fixed amount, by an appliance incorporating a metered pump, is not a projection, dispersion or spray. We erroneously believed that the hand-operated liquid soap dispenser in question dispensed a fixed amount of liquid.

The dispenser is not simply a pump—it incorporates one. However, unlike an appliance incorporating a metered pump, the dispenser does, in fact, spray, project or disperse a liquid, as those terms are commonly defined. Accordingly, the dispenser is covered by the terms of heading 8424, HTSUS, and is classifiable under subheading 8424.89.00, HTSUS.

Holding:

The hand-operated liquid soap dispensers are classifiable under subheading 8424.89.00, HTSUS, which provides for other mechanical appliances for projecting, dispersing or spraying liquids. The corresponding rate of duty for articles of this subheading is 3.7% *ad valorem*.

Effect on Other Rulings:

NY 877878, dated October 2, 1992, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:M 956529 LTO
Category: Classification
Tariff No. 8424.89.00

MS. KAREN GRIDER
GLOBAL OEM CORPORATION
1755 Park Street, Suite 330
Naperville, Illinois 60563

Re: Soap and Lotion Dispenser; NY 889286 *revoked;* heading 8413; EN 84.13; EN 84.24.

DEAR MS. GRIDER:

This is in reference to NY 889286, issued to you on September 15, 1993, concerning the classification of the model LD 100C countertop liquid dispenser under the Harmonized Tariff Schedule of the United States (HTSUS). Based upon a further review of this matter, we have reconsidered NY 889286.

Facts:

The article in question is the model LD 100C countertop liquid dispenser for dishwashing and hand soaps, hand lotions or other liquids. It consists of a chrome-plated combination head and pump assembly, threaded mounting body and nut, and plastic storage bottle. The unit is normally mounted onto a sink or kitchen countertop with the pump assembly showing and the bottle underneath. The unit discharges liquid by manually pumping the head assembly up and down.

In NY 889286, Customs classified the countertop liquid dispenser as a liquid hand pump under subheading 8413.20.00, HTSUS, rather than as a mechanical appliance for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Issue:

Whether countertop liquid dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89.00, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or Chapter notes * * *."

The headings at issue are as follows:

8413	Pumps for liquids, whether or not fitted with a measuring device * * *
* * * * * * *	
8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Co-operation Council's official interpretation of the Harmonized System. While not legally binding, the Ens provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 84.13, pg. 1161, states that heading 8413, HTSUS, excludes appliances for projecting, dispersing or spraying liquids. Thus, if the articles in question are described in heading 8424, HTSUS, they cannot be classified under heading 8413, HTSUS.

EN 84.24, pg. 1188, states that heading 8424, HTSUS, "covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials * * * in the form of a jet, a dispersion (whether or not in drips) or a spray." The fact that an article "dispenses" a liquid does not necessarily mean that it is covered by heading 8424, HTSUS. For an article to be covered by this heading, it must either project, disperse or spray that liquid.

The dispensing of a liquid in a fixed amount, by an appliance incorporating a metered pump, is not a projection, dispersion or Spray. We erroneously believed that the countertop liquid dispenser in question dispensed a fixed amount of liquid.

The dispenser is not simply a pump—it incorporates one. However, unlike an appliance incorporating a metered pump, the dispenser does, in fact, spray, project or disperse a liquid, as those terms are commonly defined. Accordingly, the dispenser is covered by the terms of heading 8424, HTSUS, and is classifiable under subheading 8424.89.00, HTSUS.

Holding:

The countertop liquid dispensers are classifiable under subheading 8424.89.00, HTSUS, which provides for other mechanical appliances for projecting, dispersing or spraying liquids. The corresponding rate of duty for articles of this subheading is 3.7% *ad valorem*.

Effect on Other Rulings:

NY 889286, dated September 15, 1993, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF BUBBLE AND WATER GUN TOYS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs intends to modify or revoke seven ruling letters concerning the tariff classification of bubble and water gun toys. Comments are invited regarding the correctness of the proposed rulings.

DATE: Comments must be received on or before August 26, 1994.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Food and Chemicals Classification Branch, 1301 Constitution Avenue, NW (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lenny Feldman, Food and Chemicals Classification Branch, Office of Regulations and Rulings (202) 482–7020.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In the following Headquarters Ruling Letters (HRLs) issued by the Director, Commercial Rulings Division, Office of Regulations and Rul-

ings and New York Ruling Letters (NYRLs) issued by the Area Director of Customs, New York Seaport:

(a) HRL 950941, dated July 22, 1992,
(b) HRL 089523, dated January 6, 1992,
(c) NYRL 863525, dated June 14, 1991,
(d) NYRL 863507, dated June 13, 1991,
(e) NYRL 861617, dated March 29, 1991, and
(f) NYRL 855676, dated September 7, 1990,

toy bubble necklaces comprised of plastic bottles filled with bubble solution and accompanied by a wand, attached to a textile cord, were classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts, at a duty rate of 11 percent *ad valorem*.

Additionally, in NYRL 868343, dated November 15, 1991, a toy water gun necklace comprised of a plastic water gun attached to a textile cord was classified in subheading 7117.90.5000, HTSUSA. These ruling letters are set forth in Attachments A, B, C, D, E, F, and G to this document.

In HRLs 953102, issued April 26, 1993, and 952296, issued December 15, 1992, plastic bubble bottles with solution and a water gun suspended on textile cords were classified within heading 9503 as other toys. These ruling letters are set forth in Attachments H and I to this document. In those decisions it was explained that the Explanatory Notes (ENS) to the Harmonized System, which represent the Customs Co-Operation Council's official interpretation of the Harmonized System, indicate, in regard to Chapter 95, that the, "* * * chapter covers toys of all kinds whether designed for the amusement of children or adults." It has been Customs position, in accordance with Additional U.S. Rule of Interpretation 1(a), HTSUSA, that the amusement requirement means that toys should be designed and used principally for amusement.

With regard to heading 7117, providing for imitation jewelry, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. As was the case in those prior decisions, 953102 and 952296, *supra*, the subject articles are not ornamental articles or pieces of jewelry, but toys principally designed to provide for amusement.

Customs intends to modify or revoke these remaining inconsistent decisions and issue ruling letters to reflect proper classification of the merchandise in subheading 9503.90.60, HTSUSA, which provides for other toys, other, other, other toys, not having a spring mechanism, at a duty rate of 6.8 percent *ad valorem*.

Before taking this action, consideration will be given to any written comments timely received. The proposed rulings modifying or revoking the Headquarters and New York ruling letters are set forth in Attachments J, K, L, M, N, O, P to this document.

Claims for detrimental reliance under 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated July 11, 1994

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., July 22, 1992.

CLA–2 CO:R:C:F 950941 STB
Category: Classification
Tariff No. 7117.90.5000

MR. ROBERT P. RAIT
12 West 37th Street
New York, N.Y. 10018

Re: Bear Bubble Bottle.

DEAR MR. RAIT:

This is in response to your inquiry of December 23, 1991, requesting the tariff classification of merchandise marketed by Almar Sales Co. as "Bear Bubble Bottle" to be imported from Taiwan. A sample was provided with your inquiry.

Facts:

The sample submitted is a bear-shaped bubble bottle made of translucent, pink colored plastic, attached to an orange textile cord that is intended to be worn on the neck. The bottle is approximately 2¾ inches in height, from the top of the pink cap to the bottom paws, and is filled with bubble solution. A plastic wand for blowing bubbles is attached to the inside of the bottle's cap. The bottle is attached to the cord by a removable plastic "C" clasp around the neck of the bottle.

No packaging or marketing literature was provided with the sample. In a telephone conversation of April 7, 1992, you stated that these items are sold both in blister packaging and with no packaging, hanging as "attention-getters" by cashier stands. Upon our request, you provided a section of a catalog which depicts the blister packaging that is often used for the retail sale of the merchandise. The package displays an actual picture of a little girl playing "dress-up", wearing a fancy flower arrangement in her hair, a bracelet on her arm, and various other adorning items including your "Bear Bubble Bottle." The words "Bear Bubble Bottle" also appear on the package as well as the drawings of bubbles that are blue, pink and yellow in color.

You further stated in the above mentioned telephone conversation that the bottles are available in shapes other than bears (most of them are heart-shaped, but may also be shaped as perfume bottles and seashells). Your price for these items is over 5 cents per piece or unit.

Issue:

Whether the Bear Bubble Bottle is classified as imitation jewelry or as a toy?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The

systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be-applied.

In this instance, the subject merchandise can be classified by reference to GRI 1. The competing provisions are as follows:

1. Subheading 7117.90.5000, HTSUSA, the provision for Imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts, and,
2. Subheading 9503.90.6000, HTSUSA, the provision for other toys, other, other, other toys (except models), not having a spring mechanism.

It is our determination that this merchandise is properly classified under subheading 7117.90.5000, HTSUSA. Note 8 to Chapter 71 sets out the broad sweep of the term "jewelry" in stating that, for the purposes of the jewelry provision (heading 7113), the expression *"articles of jewelry"* means "(Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants * * *)." Note 10 to Chapter 71 applies Note 8 specifically to the merchandise and heading at issue here by stating that "[F]or the purposes of heading 7117, the expression *"imitation jewelry"* means articles of jewelry within the meaning of paragraph (a) of note 8 above * * *."

We also note that footnote 1 of the general rate of duty column for subheading 7117.90.5000, HTSUSA, refers us to subheading 9902.71.13, HTSUSA, which temporarily suspends duties on some items valued not over 5 cents per piece or unit. This provision. specifically includes "[T]oy jewelry" in subheading 7117.90.5000, HTSUSA, as well as in various other provisions of Chapter 71. The duty rate on the subject merchandise is not suspended, however, because the merchandise is valued at over 5 cents per piece.

The determination that the Bear Bubble Bottles should be classified as imitation jewelry is consistent with a long. line of Customs Rulings concerning similar bubble jewelry merchandise including Headquarters Ruling Letter (HRL) 089523, dated January 6, 1992, and the following New York Ruling Letters (NYRLs): NYRL 863525, dated June 14, 1991; NYRL 863507, dated June 13, 1991; NYRL 861617, dated March 29, 1991; NYRL 856320, dated October 2, 1990; NYRL 856151, dated September 19, 1990, and NYRL 855676, dated September 7, 1990.

In your December 23 inquiry and in our telephone conversations you raise several arguments. These arguments relate to your contention that the "primary function" of this item is as a novelty or a toy and that the cord is no more important to its function than the carrying strap is to the function of a camera. We addressed similar arguments in the above cited HRL 089523, and are enclosing a copy of that ruling. The only real difference between the issues involved herein and the issues involved in the classification of the similar merchandise at issue in HRL 089523 is that the prior merchandise was actually marketed as a "Bubble *Pendant*" (emphasis added). However, your merchandise is clearly marketed toward little girls for the use of adornment as shown by the picture on the packaging. The other shapes in which these bottles are available, i.e., mostly "heart-shaped" but also shaped as perfume bottles and seashells, are shapes that are well suited for adornment purposes.

Holding:

The merchandise marketed as "Bear Bubble Bottle" is classified in subheading 7117.90.5000, HTSUSA, the provision for imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts, and is dutiable at a rate of 11 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., January 6, 1992.

CLA–2 CO:R:C:F 089523 STB
Category: Classification
Tariff No. 7117.90.5000

JAMES C. TUTTLE, ESQ.
KMART LEGAL DEPARTMENT
3100 West Big Beaver Road
Troy, MI 48084

Re: Twin Pack Bubble Pendant, Imitation Jewelry.

DEAR MR. TUTTLE:

This is in response to your inquiry of May 29, 1991, requesting the tariff classification of merchandise marketed by your client, Kmart Corporation, as "Twin Pack Bubble Pendant" to be imported from Taiwan. A sample was provided with your inquiry.

Facts:

The sample submitted, Kmart's code No. 04–32–62, consists of two bubble pendant necklaces in blister packaging. Each bubble pendant necklace consists of an oval shaped, 2½ inch by 2 inch bottle, filled with bubble solution. A plastic wand for blowing bubbles is attached to the inside of the bottle's cap. The bottles are attached to a textile cord by a removable plastic "C: clasp around the neck of the bottle.

The picture on the packaging depicts a young girl wearing the pendant around her neck while blowing bubbles with the wand. The items are referred to on the packaging as "Bubble Pendants." Counsel for the importer states that the merchandise is designed, marketed and sold by Kmart in its toy department as toys for children ages five and older.

We understand from Kmart's counsel that the cost of the blister-packaged bubble pendant necklaces is 77 cents, or 38½ cents per bubble pendant necklace.

Issue:

Should the Twin pack Bubble Pendants be classified as toys or as imitation jewelry.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

In this instance, the subject merchandise can be classified by reference to GRI 1. The competing provisions are as follows:

1. Subheading 7117.90.5000, HTSUSA, the provision for imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts, and,
2. Subheading 9503.90.6000, HTSUSA, the provision for other toys, other, other, other toys (except models), not having a spring mechanism.

It is our determination that this merchandise is properly classified under subheading 7117.90.5000, HTSUSA Note 8 to Chapter 71 sets out the broad sweep of the term "jewelry" in stating that, for the purposes of the jewelry provision (heading 7113), the expression *"articles of jewelry"* means "[A]ny small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, Watch chains, fobs, pendants * * *)." Note 10 to chapter 71 applies Note 8 specifically to the merchandise and heading at issue here by stating that "[F]or the purposes of heading 7117, the expression *"imitation jewelry"* means articles of jewelry within the meaning of paragraph (a) of note 8 above * * *."

We also note that footnote 1 of the general rate of duty column for subheading 7117.90.5000, HTSUSA, refers us to subheading 9902.71.13, HTSUSA, which temporarily suspends duties on some items valued not over 5 cents per piece or unit. This provi-

sion specifically includes "[T]oy jewelry" in subheading 7117.90.5000, HTSUSA, as well as in various other provisions of Chapter 71. The. duty rate on the subject merchandise is not suspended, however, because the merchandise is valued at over 5 cents per piece.

The determination that the bubble pendants should be classified as imitation jewelry is consistent with a long line of Customs Rulings concerning similar bubble jewelry merchandise including the following New York Ruling Letters (NYRLs): NYRL 863525, dated June 14, 1991, NYRL 863507, dated June 13, 1991, NYRL 861617, dated March 29, 1991, NYRL 856320, dated October 2, 1990, NYRL 856151, dated September 19, 1990, and NYRL 855676, dated September 7, 1990.

In your submission of May 29, 1991, you raise several arguments. You cite several Headquarters Ruling Letters (HRLs), contending that the classification therein of toy jewelry items as toys in heading 9503, HTSUSA, indicates that these bubble pendants should be similarly classified. We note, however, that the items at issue in all three of those rulings, none of which were bubble jewelry items, were all put up for sale as parts of sets that included various toy and other non-imitation jewelry items. Our decisions in those rulings were based on the fact that these sets were marketed and sold as toys, and thus were classified as other toys, regardless of the fact that some of the individual items may have been classified differently had they been imported separately. Moreover, at the time of the drafting of those rulings, subheading 9902.71.13, HTSUSA, had not been amended to specifically include *"Toy* jewelry" in the various Chapter 71 headings, but, instead, merely referred to certain "jewelry" as being eligible for duty suspension.

You also contend that the principal use that one derives from this merchandise is the amusement from the bubble solution and that the string is really no more than a method to hang and carry the bottle of bubble solution, similar to the carrying or wearing straps of a camera or pair of binoculars. We believe, however, that the marketing and design of the merchandise refutes this claim. The item is sold under the name "Bubble Pendants" which is printed in large letters on the package.

The primary definition of "pendant" as provided in *Webster's New World Dictionary,* Third College Edition, 1988, at p. 998 is "a hanging ornamental object, as one suspended from an earring or necklace." The other examples and partial definitions all stress the hanging and/or ornamental qualities identified with the term "pendant." In contrast, the marketing of cameras and binoculars does not ordinarily stress the hanging and ornamental nature of those items. The package also depicts a young girl clearly wearing the item around the neck; the package is mostly pink in color. The depiction of a girl together with the dominating pink color indicates that the target consumers are little girls which is just the group that is likely to be interested in the item for its imitation jewelry aspect. The bubble containers have the familiar shape and design of jewelry type pendants and are not large enough to hold an amount of bubble solution that even approximates the amount normally sold in individual bottles. Thus, the wearing function of these items is more significant to their central use and value than are the carrying or wearing straps of cameras and binoculars.

Holding:

The merchandise marketed as "Twin pack Bubble pendant" is classified in subheading 7117.90.5000, HTSUSA, the provision for imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts, and 15 dutiable at a rate of 11% *ad valorem.*

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., June 14, 1991.

CLA–2–96:S:N:N1:236 863525
Category: Classification
Tariff No. 9615.19.6010, 5609.00.3000,
7117.90.5000, 3926.90.9050 and 4202.22.1500

MS. MONA WEBSTER
CUSTOMS IMPORT SPECIALIST
TARGET STORES
IMPORT DEPARTMENT CC–08G
P.O. Box 1392
Minneapolis, MN 55440

Re: The tariff classification of the Fun Pack, (style #4717) from Taiwan.

DEAR MS. WEBSTER:

In your letter dated May 18, 1991, you requested a tariff classification ruling.

The prospective import, the girl's accessory Fun Pack, consists of a ponytail holder, a textile bracelet, a bubble necklace, a bottle and cap of plastic with bubble solution worn around the neck and 30 stick on plastic earrings, all child's inside a vinyl carrying bag. The items will be classified as follows:

Description	*Classification*	*HTS*	*Rate of duty*
1. A textile bow ponytail holder;	Other combs, hairslides and the like: of textile materials	9615.19.6010	11% ad valorem
2. A polyester intertwined bracelet with Knotted ends	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables not elsewhere specified or included: of man-made fibers	5609.00.3000	9% ad valorem
3. A bubble necklace	Imitation jewelry other: other: valued over 20 cents per dozen pieces or parts	7117.90.5000	11% ad valorem
4. Plastic stick-on earring (can be used for a variety of purposes)	Other articles of plastic: other	3926.90.9050	5.3% ad valorem
5. A vinyl child's bag measuring 8¾" wide by 7" long	Handbags with outer surface of plastic sheeting	4202.22.1500	20% ad valorem

Each "Fun Pack" should be marked as clearly, legibly and indelibly as possible with the proper country of origin.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director.
New York Seaport.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., June 13, 1991.

CLA–2–96::S:N:N1:236 863507
Category: Classification
Tariff No. 9615.19.6010, 6307.90.5020,
7117.90.5000 and 1202.22.1500

MS. MONA WEBSTER
IMPORT CUSTOMS SPECIALIST
IMPORT DEPT CC–08G
33 South Sixth Street
P.O. Box 1392
Minneapolis, MN 55440–1392

Re: The tariff classification of the, *Fun Pack* style #4710, from Taiwan.

DEAR MS. WEBSTER:

In your letter dated May 15, 1991, you requested a tariff classification ruling.

The prospective import, the Fun Pack style #4710, consists of a satin bow ponytail holder, a pair of polyester shoe laces, and a bubble necklace. These items are packed inside a child's vinyl handbag measuring 6¾" long by 5" wide.

The Fun Pack, style #4710, will be classified as follows:

Descriptions	*Classification*	*HTS*	*Rate of duty*
1. Ponytail holder	Other combs, hairslides and the like: of textile materials.	9615.19.6010	11 percent ad valorem
2. Polyester shoe laces	Other made up articles * * * other corset lacings footwear lacings or similar lacings other.	6307.90.5020	7.9 percent ad valorem
3. Bubble necklace	Imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts.	7117.90.5000	11 percent ad valorem
4. Childs handbag	Handbags * * * with outer surface of plastic sheeting	4202.22.1500	20 percent ad valorem

The shoe laces are classified as above. However, for quota purposes the shoe laces are reported separately under HTS 6307.90.5020. HTS 6307.90.5020 falls within textile category designation 669. Based upon international textile trade agreements, products of Taiwan are subject to quota and visa requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Each Fun Pack should be marked as clearly, legibly and indelibly as possible with the proper country of origin.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., March 29, 1991.

CLA–2–:71:S:N:N3C:344 861617
Category: Classification
Tariff No. 7117.90.5000

MS. DENISE MURRAY
PROCORP, INC.
283 Pleasant Street
Framingham, MA 01701

Re: The tariff classification of a "Bubble Necklace" from China.

DEAR MS. MURRAY:

In your letter of March 20, 1991, you requested a tariff classification ruling on a "Bubble Necklace."

The submitted sample, a "Bubble Necklace," is a heart-shaped plastic bottle suspended from a textile neck cord. The plastic bottle contains a non-aromatic solution for blowing bubbles.

The applicable subheading for the bubble bottle necklace will be 7117.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts. The rate of duty will be 11% ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., September 7, 1990.
CLA–2–71:S:N:N3G:344 855676
Category: Classification
Tariff No. 7117.90.5000

MS. MARIE C. BIAMONTE
SBA CONSOLIDATORS
175–41 148th Road
Jamaica, N.Y. 11434

Re: The tariff classification of a "Bubble Fun Necklace" from Taiwan.

DEAR MS. BIAMONTE:

In your submission of August 6, 1990, on behalf of the Lilli Group, you requested a tariff classification ruling.

The submitted sample, a "Bubble Fun Necklace", is a heart-shaped plastic bottle suspended from a textile neck cord. The plastic bottle contains a non-aromatic solution for blowing bubbles. The necklace will be sold at retail in a blister package.

The applicable subheading for the Bubble Fun Necklace will be 7117.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts. The rate of duty will be 11 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y., November 15, 1991.
CLA–2–:71:S:N:N3G:344 868343
Category: Classification
Tariff No. 7117.90.50 and 9004.10.0000

MR. RON SIAS
J.W. HAMPTON, JR. & CO., INC.
15 Park Row
New York, NY 10038

Re: The tariff classification of children's toy jewelry and sunglasses from China.

DEAR MR. SIAS:

In your letter of October 28, 1991, on Behalf of F. W. Woolworth Company, New York, N.Y., you requested a tariff classification ruling on a child's toy jewelry necklace and sunglasses.

The submitted sample, Item #66217 SG, "Tropical Club", consists of two articles contained in a blister package. They are:

1. A child's toy jewelry necklace, consisting of a plastic water gun pendant in the shape of a seahorse, attached to a textile neck cord. The necklace is valued at $1.80 each.
2. Children's plastic sunglasses in a plastic frame.

Your sample is being returned as requested.

The applicable subheading for the plastic seahorse water gun necklace will be 7117.90.50, Harmonized Tariff Schedule of the United States (HTS), which provides for imitation jewelry: other: other: valued over 20 cents per, dozen pieces or parts. The rate of duty will be 11% ad valorem.

Because the seahorse water gun necklace is valued over 5 cents per piece, classification as toy jewelry under subheading 9902.71.13 is precluded.

The applicable subheading for the plastic sunglasses will be 9004.10.0000, HTS, which provides for spectacles, goggles and the like, corrective, protective or other: sunglasses. The rate of duty will be 7.2% ad valorem.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., April 26, 1993.

CLA–2 CO:R:C:F 953102 LPF
Category: Classification
Tariff No. 9503.90.6000

JOEL K. SIMON, ESQ.
SERKO & SIMON
One World Trade Center—Suite 3371
New York, NY 10048

Re: Bottles with bubble solution and wands, suspended on textile cords; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 952296.

DEAR MR. SIMON:

This is in response to your letter of December 16, 1992 on behalf of Russ Berrie and Company, Inc. Your inquiry requests the proper classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of plastic bottles with bubble solution and wands, suspended on textile cords. You submitted samples with your request for a binding ruling.

Facts:

The articles at issue, item numbers 18119, 19612, and 19639, are imported from Taiwan and consist of plastic bottles filled with various colored bubble solutions. The bottles range in size from approximately 2¼ to 2⅝ inches in height and come in various designs such as penguins, hearts, and bear cubs. Each bottle has a small plastic wand attached to the inside of the bottle's screw cap. The wand is used for blowing bubbles. The bottles are attached to man-made fiber textile neck cords by a removable plastic clip so that the bottle can be easily separated from the neck cord and then reattached.

Issue:

Whether the bottles with bubble solution and wands, suspended on textile cords, are classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRI's) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official

interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

The articles potentially are classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the EN's to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that these articles-consisting of bottles with bubble solution are toys. The bubble solution is a plaything which a child repeatedly will take off his neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the articles are designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject articles do not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a)(1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." These articles, in their entirety, are not necklaces because they are not worn around the neck as ornaments. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution components are not pendants because they are not ornamental articles or pieces of jewelry attached to a necklace. The subject articles, simply, are not worn for adornment.

This decision is in accord with Headquarters Ruling Letter 952296, issued December 15, 1992, where a plastic water gun suspended on a textile cord was classified as a toy. In that ruling Customs reasoned that:

> The plastic water gun is not an ornamental article or a piece of jewelry * * *, it is a toy principally designed to provide amusement to children. The expectation of the child-consumer is not to wear the plastic water gun as an article of ornamentation, but rather to play with the merchandise for the purpose of amusement. The textile cord is not principally for wearing the water gun, but is more of a method to handle and carry the water gun in order to repeatedly fill it with water and squirt others or other objects. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise.

Likewise, the subject articles principally are used for amusement and are classified, pursuant to GRI 1, within 9503 as other toys. The appropriate subheading is 9503.90.60.

Holding:

The bottles with bubble solution and wands, suspended on textile cords, are classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., December 15, 1992.
CLA–2 CO:R:C:M 952296 KCC
Category: Classification
Tariff No. 9503.49.00

STEPHEN M. ZELMAN, ESQ.
STEPHEN M. ZELMAN & ASSOCIATES
845 Third Avenue
New York, New York 10022

Re: Plastic water gun suspended on a textile cord; GRI 1; toy; General EN to Chapter 95; 7117.90.50; Note 8 to Chapter 71; Note 10 to Chapter 71; imitation jewelry; *American Heritage Dictionary;* pendant; HRL 089523.

DEAR MR. ZELMAN:

This is in response to your letter dated July 1, 1992, to Customs in New York, on behalf of Romar International Ltd., regarding the tariff classification of a plastic water gun suspended on a textile cord under the Harmonized Tariff Schedule of the United States (HTSUS). A sample of the water gun with cord was submitted for examination.

Facts:

The article under consideration is a plastic water gun in the shape of a fish suspended on a 32 inch long textile cord, style #211. The water gun is approximately 3⅓ inches long, 1¾ inches high, and ¾ inch in width. It is blue in color, with a green colored trigger, a yellow water stopper and gummed-on decal eyes. The textile cord is threaded through a loop which is molded onto the top of the fish's fin. The water gun is to be packaged and marketed with a variety of other beach toys in a bag of beach games. Other items in the bag may include a plastic shovel, plastic rake, plastic pail, swim fins and a sand mold.

Issue:

Is the plastic water gun suspended on a textile cord classified as an article of imitation jewelry under subheading 7117.90.50, HTSUS, or is it classified as a toy under subheading 9503.49.00, HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

Subheading 9503.49.00, HTSUS, provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; and accessories thereof * * * Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof * * * Other."

Although the term "toy" is not specifically defined in the tariff, General Explanatory Note (EN) to Chapter 95 of the Harmonized Commodity Description and Coding System (HCDCS) Vol. 4, p. 1585, indicates that, "[t]his Chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. The Explanatory Notes, although not dispositive, are to be looked to for proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). *See,* Additional U.S. Rule of Interpretation 1(a), HTSUS, which states that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." Customs defines principal use as that use which exceeds each other single use of the article.

We are of the opinion that the plastic water gun under consideration is a toy. The plastic water gun is designed and used principally for the amusement of children. The plastic water gun is a plaything which the child can repeatedly fill with water and squirt others or other objects. Additionally, the importer's intent to market the plastic water gun as a toy by packaging it with other beach play items further strengthens classification as a toy under subheading 9503.49.00, HTSUS.

It has been suggested that the plastic water gun is an article of imitation jewelry classifiable under subheading 7117.90.50, HTSUS, which provides for "Imitation jewelry * * * Other * * * Other * * * Valued over 20 cents per dozen pieces or parts."

Note 8 to Chapter 71 broadly construes the term "jewelry" in stating that, for the purposes of jewelry provision (heading 7113), the expression "articles of jewelry" means:

> (a) Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants * * *.

Similarly, Note 10 to Chapter 71 adds that "[F]or the purposes of heading 7117, the expression "*imitation jewelry*" means articles of jewelry within the meaning of paragraph (a) of note 8 above * * *."

Initially we are not convinced that the plastic water gun will be worn around the neck because of the obvious choking hazard it presents to the very young children for whom the gun is designed. However, assuming that the plastic water gun will be worn around the neck, it would not fall within the imitation jewelry tariff provision. The *American Heritage Dictionary,* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The plastic water gun is not an ornamental article or a piece of jewelry. As stated previously, it is a toy principally designed to provide amusement to children. The expectation of the child-consumer is not to wear the plastic water gun as an article of ornamentation, but rather to play with the merchandise for the purpose of amusement. The textile cord is not principally for wearing the water gun, but is more of a method to handle and carry the water gun in order to repeatedly fill it with water and squirt others or other objects. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise.

The water gun under consideration is distinguishable from the bubble pendant classified as imitation jewelry in Headquarters Ruling Letter (HRL) 089523 dated January 6, 1992. HRL 089523 held that bubble pendants were classified as imitation jewelry because of their principal use as articles that could be worn for adornment and due to their marketing and appeal to children who would primarily be interested in the merchandise as imitation jewelry. The water gun under consideration is clearly a toy water gun intended for the amusement of both boys and girls.

Holding:

The water gun with textile cord is properly classified under subheading 9503.49.00, HTSUS, which provides for "Other toys * * * Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof * * * Other * * *", which is dutiable at the General, Column 1, rate of 6.8% *ad valorem.*

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 956160 LPF
Category: Classification
Tariff No. 9503.90.6000

MR. ROBERT P. RAIT
12 West 37th Street
New York, NY 10018

Re: Classification of bear bubble bottles suspended on textile cords; Revocation of HRL 950941; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MR. RAIT:

In Headquarters Ruling Letter (HRL) 950941, issued July 22, 1992, a bear bubble bottle, imported from Taiwan, was classified in subheading 7117.90.5000, Harmonized

Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The article at issue is a bubble bottle, resembling a bear, made of translucent, pink colored plastic, attached to an orange textile cord allowing the article to be worn around the neck. The bottle is approximately 2¾ inches in height,. from the top of the pink cap to the bottom paws, and is filled with bubble solution. A plastic wand for blowing bubbles is attached to the inside of the bottle's cap. The bottle is attached to the cord by a removable plastic "C" clasp around the neck of the bottle. It is our understanding that the bottles are available in shapes other than bears, such as hearts or seashells.

Issue:

Whether the bear bubble bottle with bubble solution and a wand is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with HRL 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar

to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. Although the article is designed in an animal motif, in its entirety, it is not accurately described as a "toy representing an animal," because of the inclusion of the bubble solution and wand. Instead, it is classifiable, pursuant to GRI 1 in accordance with GRI 6, as an "other" toy in subheading 9503.90.60, the appropriate provision for bubble solution and its accoutrements.

Holding:

The bear bubble bottle suspended on a textile cord is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

HRL 950941 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 956561 LPF
Category: Classification
Tariff No. 9503.90.6000

NED H. MARSHAK, ESQ.
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: Classification of twin pack bubble pendant; Revocation of HRL 089523; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MR. MARSHAK:

In Headquarters Ruling Letter (HRL) 089523, issued January 6, 1992, on behalf of your client Kmart Corporation, a twin pack bubble pendant imported from Taiwan was classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The twin pack bubble pendant consists of two bubble pendant necklaces in blister packaging. Each bubble pendant necklace includes an oval shaped, 2½ inch by 2 inch bottle, filled with bubble solution. It is our understanding that the bottles are made of plastic. A plastic wand for blowing bubbles is attached to the inside of the bottle's cap. The bottles are attached to a textile cord by a removable plastic "C" clasp around the neck of the bottle.

Issue:

Whether the twin pack bubble pendant is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tar-

iff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with HRL 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The twin pack bubble pendant is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

HRL 089523 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA-2 CO:R:C:F 956562 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. MONA WEBSTER
CUSTOMS IMPORT SPECIALIST
TARGET STORES
IMPORT DEPARTMENT CC-08G
P.O. Box 1392
Minneapolis, MN 55440

Re: Classification of bubble necklace; Modification of NYRL 863525; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. WEBSTER:

In New York Ruling Letter (NYRL) 863525, issued June 14, 1991, a Fun Pack (style #4717) consisting of a ponytail holder, textile bracelet, stick on plastic earrings, vinyl child's carrying bag, and a bubble necklace was classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The bubble necklace was classified in subheading 7117.90.5000, HTSUSA, as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be partially in error. Although the other articles were properly classified, the correct classification of the bubble necklace is as follows.

Facts:

The article at issue, imported from Taiwan, is a bubble necklace comprised of a plastic bottle and cap with bubble solution.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and its accoutrements. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc.

The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The fact that the article may be worn around the neck does not mean that it principally is designed to enable one to wear the bottle and bubble solution. Instead, the article is designed primarily to allow one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. Similarly, the carrying or wearing straps of a camera or pair of binoculars do not affect the function of the merchandise nor change its classification for tariff purposes. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*. The other articles comprising the Fun Pack remain classified as held in NYRL 863525.

NYRL 863525 hereby is modified accordingly.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 956563 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. MONA WEBSTER
CUSTOMS IMPORT SPECIALIST
TARGET STORES
IMPORT DEPARTMENT CC–08G
P.O. Box 1392
Minneapolis, MN 55440

Re: Classification of bubble necklace; Modification of NYRL 863507; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. WEBSTER:

In New York Ruling Letter (NYRL) 863507, issued June 13, 1991, a Fun Pack (style #4710) consisting of a ponytail holder, shoe laces, child's handbag, and a bubble necklace were classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The bubble necklace was classified in subheading 7117.90.5000, HTSUSA, as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have

reviewed that ruling and have found it to be partially in error. Although the other articles were properly classified, the correct classification of the bubble necklace is as follows.

Facts:

The article at issue, imported from Taiwan, is a bubble necklace. It is our understanding that the article is comprised of a plastic bottle and cap with bubble solution.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and its accoutrements. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The fact that the article may be worn around the neck does not mean that it principally is designed to enable one to wear the bottle and bubble solution. Instead, the article is designed primarily to allow one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. Similarly, the carrying or wearing straps of a camera or pair of binoculars do not affect the function of the merchandise nor change its classification for tariff purposes. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*. The other articles comprising the Fun Pack remain classified as held in NYRL 863507.

NYRL 863507 hereby is modified accordingly.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:F 956564 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. DENISE MURRAY
PROCORP, INC.
283 Pleasant Street
Framingham, MA 01701

Re: Classification of bubble necklace; Revocation of NYRL 861617; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. MURRAY:

In New York Ruling Letter (NYRL) 861617, issued March 29, 1991, a bubble necklace, imported from China, was classified in subheading 7117.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The bubble necklace consists of a heart-shaped plastic bottle suspended from a textile neck cord. The plastic bottle contains a non-aromatic solution for blowing bubbles.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter (HRL) 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

NYRL 861617 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT O]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA-2 CO:R:C:F 956565 LPF
Category: Classification
Tariff No. 9503.90.6000

MS. MARIE C. BIAMONTE
SBA CONSOLIDATORS
175-41 148th Road
Jamaica, NY 11434

Re: Classification of bubble fun necklace; Revocation of NYRL 855676; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRL 953102.

DEAR MS. BIAMONTE:

In New York Ruling Letter (NYRL) 855676, issued September 7, 1990, a bubble necklace, imported from Taiwan, was classified in subheading 7117.90.5000, Harmonized Tar-

iff Schedule of the United States Annotated (HTSUSA), as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be in error. The correct classification is as follows.

Facts:

The bubble fun necklace consists of a heart-shaped plastic bottle suspended from a textile neck cord. The plastic bottle contains a non-aromatic solution for blowing bubbles.

Issue:

Whether the bubble necklace is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a bottle with bubble solution, is a toy. The bubble solution is a plaything which a child repeatedly will take off their neck for the purpose of blowing bubbles. Even if worn around the neck, it is apparent the child principally will use the article to blow bubbles. It is likely that once the supply of bubble solution has been depleted, the novelty and purpose of this article will cease to exist and, as a result, the child will discard the empty plastic bottle and textile cord. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The bottle and bubble solution is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letter (HRL) 953102, issued April 26, 1993, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles, suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the plastic bottle and bubble solution as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the bottle and bubble solution, but primarily allows one to handle and carry the bottle and bubble solution in order to repeatedly blow bubbles. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. The appropriate subheading is 9503.90.6000.

Holding:

The bubble fun necklace is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*.

NYRL 855676 hereby is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT P]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA-2 CO:R:C:F 956566 LPF
Category: Classification
Tariff No. 9503.90.6000

MR. RON SIAS
J.W. HAMPTON, JR. & CO., INC.
15 Park Row
New York, NY 10038

Re: Classification of plastic water gun suspended on textile cord; Modification of NYRL 868343; Heading 9503, HTSUSA, other toy; Not 7117, imitation jewelry; HRLs 953102, 952296.

DEAR MR. SIAS:

In New York Ruling Letter (NYRL) 868343, issued November 15, 1991, merchandise known as the "Tropical Club" (item #66217 SG) consisting of a plastic water gun suspended on a textile cord and plastic sunglasses was classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The water gun was classified in subheading 7117.90.5000, HTSUSA, as imitation jewelry, other, other, valued over 20 cents per dozen pieces or parts. We have reviewed that ruling and have found it to be partially in error. The correct classification of the water gun is as follows.

Facts:

The article at issue, imported from China, consists of a plastic water gun resembling a seahorse, attached to a textile reck cord.

Issue:

Whether the water gun suspended on a textile neck cord is classifiable in heading 9503 as other toys or in heading 7117 as imitation jewelry.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

The subject article potentially is classifiable within heading 9503 as other toys or within 7117 as imitation jewelry. In regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for the amusement of children or adults." It is Customs position that the amusement requirement means that toys should be designed and used principally for amusement. *See* Additional U.S. Rule of Interpreta-

tion 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article.

It is our position that the article, consisting of a water gun, is a toy. The water gun is a plaything which a child repeatedly will take off their neck for the purpose of filling it with water and squirting others. Even if worn around the neck, it is apparent the child principally will use the article to squirt others. Accordingly, the article is designed and used principally for amusement.

In regard to heading 7117, Legal Notes 8 and 10 to Chapter 71 indicate that the expression "imitation jewelry" includes any small objects of personal adornment, gem-set or not, such as rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, etc. The subject article does not fit the description of imitation jewelry provided in the Legal Notes. *Webster's Third New International Dictionary* (1968), defines a necklace as "1(a) (1): a string of beads or other small objects (as precious stones) that is worn about the neck as an ornament (2): a chain or band usu. of metal often specially decorated * * * and worn about the neck as an ornament." This article, in its entirety, is not a necklace, because it is not worn around the neck as an ornament. The *American Heritage Dictionary* Second College Edition (1985), defines a pendant as "something suspended from something else, esp. an ornament or piece of jewelry attached to a necklace or bracelet." The water gun is not a pendant because it is not an ornamental article or piece of jewelry attached to a necklace. The subject article, simply, is not worn for adornment.

This decision is in accord with Headquarters Ruling Letters (HRLs) 953102, issued April 26, 1993, and 952296, issued December 15, 1992, where plastic bottles designed as penguins, hearts, and bear cubs containing bubble solution and a wand for blowing bubbles as well as a plastic water gun resembling a fish, both suspended on textile cords, were classified as toys. Similarly, in the instant case, the child-consumer would not intend to wear the water gun as an article of ornamentation, but rather intend to play with the merchandise for the purpose of amusement. The textile cord is not principally designed to enable one to wear the water gun, but primarily allows one to handle and carry the water gun in order to repeatedly fill it with water and squirt others. The textile cord is similar to the carrying or wearing straps of a camera or pair of binoculars which do not affect the function of the merchandise. Accordingly, the subject article principally is used for amusement and is classified, pursuant to GRI 1, within heading 9503 as other toys. Although the article is designed in an animal motif, in its entirety, it is not accurately described as a "toy representing an animal," because of the inclusion of the water gun. Instead, it is classifiable, pursuant to GRI 1 in accordance with GRI 6, as an "other" toy in subheading 9503.90.60, the appropriate provision for water guns and their accoutrements.

Holding:

The water gun suspended on a textile cord is classifiable in subheading 9503.90.6000, HTSUSA, as "Other toys * * *: Other: Other: Other toys (except models), not having a spring mechanism." The applicable rate of duty is 6.8 percent *ad valorem*. The other article comprising the "Tropical Club" remains classified as held in NYRL 868343.

NYRL 868343 is modified accordingly.

JOHN DURANT,
Director,
Commercial Rulings Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 141 and 142

WITHDRAWAL OF PROPOSED CUSTOMS REGULATIONS AMENDMENTS RELATING TO PREFILING OF ENTRY DOCUMENTATION

RIN 1515–AB21

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal.

SUMMARY: This document withdraws proposed amendments to the Customs Regulations which would have limited the privilege of prefiling merchandise entry documentation to participants in the Automated Broker Interface and to other entry filers where the carrier participates in, or where transmission is otherwise through, the Automated Manifest System. Customs has determined that the proposals should be withdrawn based on concerns expressed by the trade community and because Customs is not presently in a position to make the programming changes that would be necessary to implement the proposals.

DATE: Withdrawal effective July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ernie Cunningham, Office of Inspection and Control (202–927–0167).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 6, 1991, Customs published in the Federal Register (56 FR 56608) an Advance Notice of Proposed Rulemaking stating that Customs was considering amending Parts 141 and 142 of the Customs Regulations (19 CFR Parts 141 and 142) to limit merchandise entry prefiling (that is, prior to arrival of the merchandise) privileges to: (1) entries filed by entry filers who are participants in the Automated Broker Interface (ABI); and (2) entries filed by non-ABI entry filers for merchandise that is transported on carriers that are participants in the Automated Manifest System (AMS). The document also gave advance notice that if this proposal is adopted, Customs would within six months

of its adoption release selectivity results (that is, a determination whether a general or intensive examination of merchandise is necessary) prior to carriers' arrival only to entry filers whose merchandise is transported on carriers that are participants in AMS. Thus, in effect, while entry filers who are participants in ABI could continue to prefile, provisional releases would only be issued by Customs for merchandise transported on AMS carriers. The document invited the public to submit written comments to assist Customs in determining whether to proceed further with these proposals.

On December 13, 1993, Customs published in the Federal Register (58 FR 65135) a Notice of Proposed Rulemaking which, after discussing the public comments submitted in response to the Advance Notice of Proposed Rulemaking and noting that no regulatory change was necessary to implement the proposal to narrow the category of entry filers to whom selectivity results would be released prior to arrival, set forth specific proposals to amend §§ 141.68(a)(3) and 142.2(b)(1) of the Customs Regulations (19 CFR 141.68(a)(3) and 142.2(b)(1)). The proposed amendment to § 141.68(a)(3) consisted essentially of a cross-reference to § 142.2(b)(1), and the proposed amendment to § 142.2(b)(1) involved setting forth three circumstances in which entry documentation may be submitted before the merchandise arrives within the limits of the port where entry is to be made. The first two circumstances were essentially as outlined in the Advance Notice of Proposed Rulemaking. The third circumstance, added in response to a public comment, involved cases where, regardless of whether the carrier transporting the merchandise for which the entry documentation is filed is an AMS participant, there is an AMS transmission through the Express Consignment Module of Air AMS regarding that carrier. The Notice of Proposed Rulemaking invited public comments on the proposals which would be considered before adoption of the proposals, and the public comment period closed on February 11, 1994.

Ten letters were received setting forth comments on the proposed regulatory amendments. Although the majority of these commenters supported, in principle, one of the underlying Customs goals of encouraging carriers to automate, a number of these commenters were of the view that practical considerations militated against implementation of the proposals under present circumstances. The cited circumstances included the need for modifications to Air and Sea AMS to deal with continuing operational problems, the need to provide access to AMS through ABI, and the need to address the lack of adequate participation in Air AMS on the part of freight forwarders and deconsolidators. Some commenters objected in principle to the approach of encourging one group to do something by taking a benefit away from another group, and other commenters stated that the proposals would put small trucking operators and small customs brokers at a competitive disadvantage vis-a-vis larger entities that can more easily support the expense of becoming operational in AMS and ABI.

Customs believes that the comments submitted in response to the Notice of Proposed Rulemaking raise important issues that must be more fully addressed before the published proposals are adopted. Those comments, as well as further internal review of this matter by Customs, demonstrate that the proposed changes to the existing prefiling policy would require extensive programming changes in selectivity, AMS, the Automated Air Arrival/Departure Log, and the yet to be developed Automated Sea Arrival/Departure Log. Due to other programming priorities, including the need to address unresolved problems in Air AMS, and because of the unavailability of adequate personnel and budgetary resources to devote to the task, Customs is not at the present time in a position to pursue such large-scale programming changes. Accordingly, the proposals set forth in the document published in the Federal Register at 58 FR 65135 on December 13, 1993, are hereby withdrawn.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: June 24, 1994.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, July 15, 1994 (59 FR 36102)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–108)

NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MFG. CORP. AND NTN CORP., PLAINTIFFS *v.* UNITED STATES, U.S. DEPARTMENT OF COMMERCE, AND RONALD H. BROWN, SECRETARY OF COMMERCE, DEFENDANTS, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 92–03–00167

Pursuant to Rules 59 and 60 of the Rules of this Court, plaintiffs move this Court to amend the decision issued and order entered in this case in Slip Op. 94–96, June 8, 1994, and this Court, after due deliberation, hereby grants the same and issues this revised and amended decision and order.

Plaintiffs move pursuant to Rule 56.2 of the Rules of this Court for judgment upon the agency record. Plaintiffs specifically contest the Department of Commerce, International Trade Administration's ("ITA") determination (1) not to employ a 10% "cap" on any single physical criterion in the "sum of the deviations" model match methodology; (2) to split the price of sets sold in the home market for purposes of determining foreign market value of cups and cones sold individually in the United States; (3) to match U.S. sales with home market sales at different levels of trade; (4) not to make a level of trade adjustment reflecting the full difference in price levels between the two levels of trade; (5) to use a three-month test to determine whether sales were made below cost over an "extended period of time"; (6) to reject the reported interest rate expense taking into account compensating deposits; (7) to use home market sales not in the ordinary course of trade; (8) to use sales made in insufficient quantities in determining foreign market value; (9) to compare bearings of different design types; (10) not to deduct home market discounts from the home market unit price in its analysis of whether home market sales were below the cost of production; (11) to ignore 40% of home market sales and to merge home market sales with the list of merchandise sold in the United States and home market and to create a data set "TYPE"; and (12) not to issue amended final results in the subject review.

Held: Plaintiffs' motion for judgment upon the agency record is granted in part and is remanded to the ITA for (1) application of a 10% limit upon deviation from the five-criterion model match methodology used in the final results; (2) explanation of its reasons for adjusting for differences in levels of trade; (3) explanation of its reasons for not accepting plaintiffs' method for calculation of credit expenses and not using plaintiffs' nominal interest rate; (4) reconsideration of plaintiffs' claim that certain home market sales were not in the ordinary course of trade and therefore should be excluded from the calculation of foreign market value; (5) reconsideration of the question whether discounts should be deducted from home market sales prices for purposes of the below-cost of production sales test; (6) comments upon the question whether the above-cost home market merchandise sales were adequate for calculating foreign market value; and (7) correction of computer programming instructions (a) to preclude the exclusion of certain home market sales for calculation of foreign market value, and (b) to properly merge home market sales data base with U.S. sales data base. All other issues are affirmed.

[Plaintiffs' motion is granted in part and denied in part; this case is remanded to the ITA.]

(Dated July 6, 1994)

Barnes, Richardson & Colburn (Robert E. Burke, Donald J. Unger and *Jesse M. Gerson)* for plaintiffs.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis);* of counsel: *Linda S. Chang,* Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Stewart and Stewart (Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., William A. Fennell, Julie Chasen Ross and *Edith A. Eisner)* for defendant-intervenor.

OPINION

TSOUCALAS, *Judge:* Plaintiffs, NTN Bearing Corporation of America, American NTN Bearing Mfg. Corporation and NTN Corporation ("NTN"), commenced this action challenging certain aspects of the Department of Commerce, International Trade Administration's ("ITA" or "Commerce") final results of its second administrative review of certain tapered roller bearings ("TRBs") from Japan. *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review ("Final Results"),* 57 Fed. Reg. 4,951 (Feb. 11, 1992).

Specifically, plaintiffs claim that the ITA erred in (1) its refusal to employ a 10% maximum deviation limit on any single physical criterion employed by the ITA in their "sum of the deviation" methodology, which is used to determine similar merchandise sold in the home market; (2) basing foreign market value of TRB cups and cones sold in the United States upon prices created by splitting the price of sets sold in the home market; (3) matching U.S. sales with home market sales at different levels of trade when no sales of such or similar merchandise at the same level of trade were found in the home market; (4) its refusal to make a level of trade adjustment which would reflect the full differences in price levels between different levels of trade; (5) its refusal to use a Period of six months, which represents a majority of the period of review, for purposes of the "extended period of time test" employed by the ITA as part of its test to exclude home market sales made at prices below cost of production; (6) its refusal to use the interest rate reported by NTN, which rate took compensating deposits into account, for purposes of calculating credit expenses in Japan and inventory carrying cost in the United States; (7) its use of home market sales not in the ordinary course of trade in its calculation of foreign market value, despite the statement in the final results notice that such sales would not be used; (8) that certain home market sales used by the ITA in determining foreign market value were "inadequate" under 19 U.S.C. § 1677b(b) (1988); (9) its comparison of bearings of different design types; (10) its failure to deduct discounts from the home market unit price in its analysis of whether sales were below cost of production; (11) its failure to correct certain computer errors; and (12) its refusal to issue amended final results in this review, correcting errors noted in paragraphs 7, 10, and 11. *Plaintiffs' Motion and Memorandum in Support Thereof for Judgment on the Agency Record ("Plaintiffs' Brief")* at 15–66.

Upon reconsideration of *NTN Bearing Corp. of America, American NTN Bearing Mfg. Corp. and NTN Corp. v. United States,* Slip Op. 94–96, June 8, 1994, and plaintiffs' *Motion to Amend Judgment,* this Court herein revises and re-issues this decision.

BACKGROUND

In 1976, the Treasury published a dumping finding, T.D. 76–227, with respect to TRBs from Japan. *Tapered Roller Bearings and Certain Components Thereof From Japan,* 41 Fed. Reg. 34,974 (Aug. 18, 1976). In 1981, Commerce clarified T.D. 76–227 to cover only TRBs four inches or less in outside diameter, and certain TRB components. *Tapered Roller Bearings and Certain Components Thereof From Japan; Clarification of Scope of Antidumping Finding,* 46 Fed. Reg. 40,550 (Aug. 10, 1981). In 1982, Commerce revoked T.D. 76–227 with respect to TRBs manufactured by NTN. *Defendants' Memorandum in Partial Opposition to Plaintiffs' Motion for Judgment Upon the Agency Record ("Defendants' Brief")* at 4.

In 1987, Commerce published another antidumping duty order on TRBs from Japan. *Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan,* 52 Fed. Reg. 37,352 (Oct. 6, 1987). This order included all TRBs and parts thereof manufactured by NTN and all TRBs over four inches in outside diameter and parts thereof manufactured by other manufacturers.

In August 1991, Commerce published its final results of its first administrative review of TRBs covered by the 1987 order. *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review,* 56 Fed. Reg. 41,508 (Aug. 21, 1991). These final results have been contested by Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. ("Koyo") (Court No. 91–09–00704), NTN (Court No. 91–09–00695), and The Timken Company ("Timken") (Court No. 91–09–00697).

In 1989, Commerce published a notice of opportunity to request administrative review of sales of TRBs covered by the 1987 order for the period October 1, 1988 through September 30, 1989. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 54 Fed. Reg. 41,317 (Oct. 6, 1989). The domestic petitioner, Timken, and two respondents requested administrative review of the TRBs at issue. Consequently, Commerce initiated the second administrative review of the TRBs. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 54 Fed. Reg. 48,010 (Nov. 20, 1989). The review covered sales of TRBs by Koyo, Nippon Seiko K.K. ("NSK"), Nachi Fujikoshi Corporation ("Nachi") and merchandise manufactured by NTN and entered by Caterpillar Inc. during the review period. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; preliminary Results of Antidumping Duty Administrative Review,* 56 Fed. Reg. 20,593 (May 6, 1991).

After Timken requested Commerce to conduct a cost of production ("COP") investigation of all four respondent companies, Commerce sent antidumping questionnaires, including a request for information to NTN, Koyo, Nachi, and NSK. Nachi responded that it had no sales to the United States during the review period. Koyo submitted revised computer tapes on August 10, 1990. NTN submitted corrections on August 21, 1990. Only NSK's information was verified during this review. *Defendants' Brief* at 5.

In May 1991, Commerce published its preliminary determination of the second administrative review. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; Preliminary Results of Antidumping Duty Administrative Review,* 56 Fed. Reg. at 20,593. All interested parties, except Nachi, submitted case and rebuttal briefs and a hearing was held on May 24, 1991.

In February 1992, Commerce published its final determination. These final results have been contested by Timken (Court No. 92–03–00162), NTN (Court No. 92–03–00167), Koyo (Court No. 92–03–00169), and NSK (Court No. 92–03–00158).

Discussion

This Court must uphold final results of an ITA administrative review unless the ITA determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is defined as "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 229 (1938); *Alhambra Foundry Co. v. United States,* 12 CIT 343, 345, 685 F. Supp. 1252, 1255 (1988). It is "not within the Court's domain either to weigh the adequate quality or quantity of the evidence for sufficiency or to reject a finding on grounds of a differing interpretation of the record." *Timken Co. v. United States,* 12 CIT 955, 962, 699 F. Supp. 300, 306 (1988), *aff'd,* 894 F.2d 385 (Fed Cir. 1990).

1. *Model Match Methodology:*

NTN argues that, for purposes of calculating dumping margins, Commerce compared dissimilar merchandise because it did not impose a ten percent limit upon deviation from the five-criteria model match methodology for selecting the most similar home market TRB model. *Plaintiffs' Brief* at 15–21.

The ITA asserts that when identical merchandise is not available in the home market for comparison with the merchandise sold to the United States, Commerce must select "similar" comparison merchandise based upon the physical characteristics of the merchandise being compared. *Defendants' Brief* at 10–11; 19 U.S.C. § 1677(16) (1988).[1]

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[1] 19 U.S.C. § 1677(16) (1988) provides:

The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purpose of part II of this subtitle can be satisfactorily made:

Continued

Commerce has been granted broad discretion to devise a methodology for determining what constitutes "similar" merchandise. *See Smith-Corona Group v. United States*, 713 F.2d 1568, 1571 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984).

In this review, the ITA compared hums market sales of TRBs to U.S. sales according to five physical characteristics criteria, determining a "similar" bearing by computing a single factor, the "sum of the deviations," which is based on differences between the U.S. and home market bearings. With respect to each, ITA compared the variable cost of the "similar" home market bearing to that of the U.S. model. If the difference was greater than 20%, the ITA did not consider the pair to be "similar." If not, this cost difference was used to calculate an adjustment pursuant to 19 C.F.R. § 353.57(b) (1992). *Final Results*, 57 Fed. Reg. at 4,952.

An accurate investigation requires that the merchandise used in the comparison be as similar as possible. Furthermore, as plaintiffs correctly maintain, there is a statutory preference for comparison of most similar, if not identical merchandise for the purpose of FMV calculations. 19 U.S.C. § 1677(16); *see Timken Co. v. United States ("Timken I")*, 10 CIT 86, 96, 630 F. Supp. 1327, 1336 (1986). Undoubtedly, the ITA's fundamental objective in an antidumping investigation is to compare the United States price of imported merchandise with the value of "such or similar merchandise" sold in the foreign market. *Timken I*, 10 CIT at 95, 630 F. Supp. at 1336.

This Court recently ruled on this issue in *Koyo Seiko Co. v. United States*, 17 CIT ____, ____, 834 F. Supp. 431, 434–35 (1993) stating that Commerce's methodology "must be used in conjunction with the ten percent cap to limit the permissible deviation of the criteria used to make TRB models." *Id.* at ____, 834 F. Supp. at 435. The use of a ten percent cap avoids comparisons between products which differ so dramatically that they simply cannot be considered commercially similar. *Id.* More recently, this Court adhered to this decision in *NTN Bearing Corp. of America, American NTN Bearing Mfg. Corp. and NTN Corp. v. United States*, 17 CIT ____, ____, 835 F. Supp. 646, 648 (1993).

The Court adheres to its earlier decision and, therefore, this case is remanded to Commerce to impose a 10% limit upon deviation from the five-criterion model match methodology used in the final results for selecting the most similar home market TRB model.

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.
(B) Merchandise—
(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,
(ii) like that merchandise in component material or materials and in the purposes for used, and
(iii) approximately equal in commercial value to that merchandise.
(C) Merchandise—
(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,
(ii) like that merchandise in the purposes for which used, and
(iii) which the administering authority determines may reasonably be compared with that merchandise.

2. *Splitting TRB Sets to Calculate FMV:*

NTN argues that splitting of TRB sets into cups and cones is contrary to statute in that it results in the use of fictitious sales and fictitious markets (in order to create fictitious prices) for purposes of establishing foreign market value. *Plaintiffs' Brief* at 22.

Commerce maintains that the set-splitting methodology is used to apportion the price of a set to its component parts based on a ratio of the cost of production of each part to the cost of production of the set. Commerce asserts that at no time do they create a fictitious sale: they only allot portions of the price of actual sales to their component parts. *Defendants' Brief* at 28–33.

NTN argues that the establishment of foreign market value by the agency is subject to clearly defined guidelines in the statute: "* * * In the ascertainment of foreign market value for the purposes of this subtitle no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account." 19 U.S.C. § 1677b(a)(1) (1988).

NTN contends that 19 U.S.C. § 1677b(a)(1) and 19 C.F.R. § 353.43(b) (1992) do not permit the creation of fictitious, "pretended" sales for purposes of calculating foreign market value. *Plaintiffs' Brief* at 22–23. NTN's argument has been previously rejected by this Court in *Timken Co. v. United States ("Timken II")*, 11 CIT 786, 794, 673 F. Supp. 495, 504 (1987); *see also NTN Bearing Corp. of America v. United States*, 14 CIT 623, 639–40, 747 F. Supp. 726, 740 (1990). NTN states that it believes that the decision of the Court in *Timken II* as to set splitting is erroneous because the Court failed to consider the statutory scheme for the determination of whether merchandise is being sold in the U.S. at less than fair value. *Plaintiffs' Brief* at 32. They argue that the statutory scheme provides that fair value shall be determined in the first instance by reference to home market prices for "such or similar" merchandise. 19 U.S.C. § 1677b(a)(1)(A). If there are not sufficient sales of such or similar merchandise in the home market, the statute directs the administering authority to look to third country prices or constructed value. 19 U.S.C. § 1677b(a)(1)(B) and (2). NTN further states that the decision of the Court in *Timken II* also undermines the fundamental purpose of the antidumping duty law by subjecting importers to arbitrary assessments of antidumping duties. *Plaintiffs' Brief* at 32.

This Court disagrees with NTN's assessment of the statute. Rather than frustrating the purpose of the antidumping law, ITA's set-splitting methodology furthers that purpose by discouraging circumvention. This Court has found that the statutory provision defining foreign market value as the price at which such or similar merchandise is sold (19 U.S.C. § 1677b(a)(1)(A)) cannot be interpreted so as to exclude set splitting because such an interpretation "would clearly facilitate, if not promote, the circumvention of the dumping laws." *NTN Bearing Corp.*, 14 CIT at 640, 747 F. Supp. at 741.

As this Court stated in *Timken II,* NTN is incorrect in asserting that by splitting sets the ITA used "pretended" sales to determine foreign market value. *Timken II,* 11 CIT at 794, 673 F. Supp. at 504. The sales of the cups and cones in the home market were not pretended: they were legitimate sales to legitimate customers that actually took place.

Nor can section 1677b(a)(1)(B) reasonably be interpreted as preventing the ITA from determining prices of home market merchandise whenever that merchandise was sold together with other merchandise for a single price. That section is intended to prevent foreign manufacturers from using misleading invoices or other practices to circumvent the antidumping law. See H.R. Conf. Rep. No. 79, 67th Cong., 1st Sess. 11 (1921) (stating that the purpose of the section is to prevent the establishment of a fictitious market value by other than bona fide sales). The ITA's methodology of splitting sets not only discourages such circumvention, it does not permit it. In the absence of the agency's practice of splitting sets and determining prices based on relative production costs, NTN could have compelled the use of constructed value simply by selling sets in one market and single cups and cones in the other. *See Certain Electric Motors from Japan; Final Results of Administrative Review of Antidumping Duty Order,* 49 Fed. Reg. 32,627, 32,628–29 (Aug. 15, 1984) (ITA chose system sales as the basis for comparison to prevent the possibility of disguised margins). The Court therefore affirms the ITA's action and declines to read section 1677b(a)(1) to permit such control by foreign manufacturers of the manner which foreign market value is determined.

3. *Sales Across Different Levels of Trade:*

NTN argues that Commerce erred in comparing U.S. TRB models with home market TRB models sold at different levels of trade and that the Court should reject Commerce's methodology. *Plaintiffs' Brief* at 34–39. For the reasons set out below, NTN's argument is meritless.

19 U.S.C. § 1675(a) (1988) requires Commerce to calculate the difference between foreign market value and United States price ("USP") of the imported merchandise. Before calculating FMV, Commerce must first identify for each U.S. sale a comparison home market sale. If identical merchandise as defined in 19 U.S.C. § 1677(16) is not available, Commerce must then proceed to select similar merchandise as defined in subsections (B) or (C) of 19 U.S.C. § 1677(16).

This Court on several occasions has affirmed Commerce's selection of most similar merchandise sold in the home market when alternative levels were unavailable. See *NTN Bearing Corp.,* 14 CIT at 634, 747 F. Supp. at 736; *Timken II,* 11 CIT at 793, 673 F. Supp. at 504; *Koyo Seiko Co. v. United States,* 16 CIT ____, ____, 796 F. Supp. 1526, 1532 (1992). Furthermore, this Court refused to recognize a "level of trade" argument similar to NTN's in *NTN Bearing Corp.,* 14 CIT at 634, 747 F. Supp. at 736, stating:

> With respect to plaintiffs' contention that the ITA's disregard of levels of trade differences is contrary to law, plaintiffs have not pro-

> vided, nor has the court uncovered any support for this argument. To the contrary, this court has noted previously that there is no statutory mandate requiring Commerce to remain within the same levels of trade while effecting its "such or similar merchandise" determination. [Citation omitted.] Plaintiffs, therefore, have no basis for requesting that the Court require Commerce to limit its comparisons by the level of trade in which the sales occur.

Thus, Commerce's comparison of sales across different levels of trade was in accordance with law and this issue is affirmed as to that comparison methodology.

NTN further argues that a level of trade adjustment based on indirect selling expenses does not reflect the substantial price differences between the two levels of trade and, therefore, any adjustments for level of trade differences should not be limited to only differences in selling expenses, but also account for the full differences in price levels. *Plaintiffs' Brief* at 39–51. Because Commerce did not address the adjustment issue in the *Final Results,* this matter is remanded to Commerce so that it may make an appropriate explanation for the limitation of the level of trade adjustment to NTN's indirect selling expenses.

4. *Extended Period of Time Test:*

It is the contention of NTN that three or more months during a period of review did not represent "an extended period of time" for sales made below the cost of production, but that an extended period must be defined as a majority of the period, or in excess of 50% of the period. *Plaintiffs' Brief* at 51–53.

Commerce disagrees, arguing that 19 U.S.C. § 1677b(b) (1988) is designed to ensure that below-cost sales are not disregarded if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of-year merchandise at below-cost prices. *Final Results,* 57 Fed. Reg. at 4,958.

Commerce explains:

> TRBs are a commodity item that do not demonstrate perishability, seasonality, or frequent generational changes in models. No information on the record in this case indicates that below-cost sales are a normal practice or characteristic in the industry. We used the period of three months to define an extended period of time since three months is commonly used to measure corporate, (financial, and economic performance. Use of three months to measure frequency of below-cost sales shows that sales below the cost of production are not random, accidental, or sporadic. This time measurement also ensures that the Department uses home market prices that are above the cost of production in its price-to-price comparisons in all but random or sporadic situations. Therefore, we have determined below-cost sales occurring in three or more months of the review period to have been made over an extended period of time. *(See Final Results of Antidumping Duty Adminis-*

trative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, 56 Fed. Reg. 65,228 (Dec. 16, 1991)).

Id.

NTN argues that the "extended period of time" for purposes of 19 U.S.C. § 1677b(b)(1) should be over half of the 12-month review period or six months. Its entire argument is based on the dictionary definition of extended time. *See Plaintiffs' Brief* at 51–53.

Congress did not provide a specified time period in section 1677b(b) for determining whether sales below cost were made over an extended period of time and therefore has left it up to Commerce to determine what constitutes an extended period of time within the context of a particular proceeding. If Commerce's interpretation is reasonable, it must be sustained. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–44 (1984).

NTN produced no information indicating that below-cost sales are a normal and expected characteristic of the trade in TRBs. Therefore, Commerce's definition of the term "extended period of time" is supported by substantial evidence and in accordance with law and this issue is hereby affirmed.

5. *Calculation of NTN's Credit Costs:*

NTN argues that, in calculating credit costs, Commerce should take into account any compensating balances that NTN had deposited. NTN further argues that Commerce should have calculated the credit costs using NTN's preferred formula. *Plaintiffs' Brief* at 53–57. Commerce states that although NTN has not demonstrated that Commerce's formula for calculating credit expenses is in any way unreasonable, the matter should be remanded so that Commerce can accurately explain its methodology. *Defendants' Brief* at 42–43. Because in the final results Commerce did not accurately explain the manner in which it calculated the deposit rate and the reasons for not using NTN's nominal interest, this issue is remanded to Commerce so that it can explain the methodology that it employed in calculating credit costs.

6. *Home Market Sales Not in the Ordinary Course of Trade:*

Commerce stated that, due to the significant number of home market sales transactions, it was satisfied that the results of the review were not meaningfully affected by the exclusion of sample sales and sales NTN had identified as not in the "ordinary course of trade." *Final Results,* 57 Fed. Reg. at 4,959.

NTN asserts that there was an inadvertent computer error on the part of the ITA given the ITA's determination in the final results not to use these sales. NTN also notes that the exclusion of such sales not in the ordinary course of trade is consistent with the ITA's practice in the original investigation and the final results issued in the 1987–88 review in this case as well as in the 1989–90 review of this case and requests that this issue be remanded to the ITA to correct this error. *Plaintiffs' Brief* at 57–58.

Commerce agrees and requests that this issue be remanded for reconsideration because of the discrepancy between the statement contained in the final results and the action actually taken (inclusion of all sales in the margin analysis). *Defendants' Brief* at 43. Therefore, this matter is remanded to the ITA for reconsideration.

7. *Use of Above-Cost Sales for Calculating Foreign Market Value:*

NTN argues that Commerce improperly used sales in insufficient quantities contrary to 19 U.S.C. § 1677b(b) in determining foreign market value. *Plaintiffs' Brief* at 58–60. Because NTN raises this issue for the first time and Commerce did not have an opportunity to address it in the final results, this matter is remanded to Commerce so that it can comment upon it.

8. *Treatment of Home Market Discounts for COP Test:*

NTN notes that while the analysis memorandum suggests that discounts were deducted from home market price before conducting the below-cost of production sales test pursuant to 19 U.S.C. § 1677b(b), the computer program indicates that no discounts were actually deducted. *Plaintiffs' Brief* at 61–62. Commerce agrees that the matter should be remanded. *Defendants' Brief* at 44. Therefore, this issue is remanded to Commerce for reconsideration.

9. *Computer Program Errors:*

NTN notes that computer programming errors resulted in the exclusion of certain home market sales and in an improper merging of home market sales data with U.S. sales data base. *Plaintiffs' Brief* at 62–65. Commerce agrees that this case should be remanded, *Defendants' Brief* at 44, and this issue is hereby remanded to Commerce for correction of the computer programming errors.

10. *Failure to Issue Amended Final Results:*

NTN argues that Commerce erred in its failure to issue final results after NTN submitted comments regarding alleged ministerial errors. *Plaintiffs' Brief* at 65–66. Commerce requests this Court to remand this issue for correction of any computer errors. *Defendants' Brief* at 45. Since suits contesting the final results were filed before comments were submitted by NTN, Commerce could not amend the final results without leave of this Court. *See Zenith Elecs. Corp. v. United States*, 884 F.2d 556, 561 (Fed. Cir. 1989). Therefore, this Court remands this issue for correction of any computer errors.

CONCLUSION

For the foregoing reasons, this case is remanded to Commerce for (1) application of a 10% limit upon deviation from the five-criterion model match methodology used in the final results; (2) explanation of its reasons for not granting NTN's claim for adjustment for different levels of trade; (3) explanation of its reasons for not accepting NTN's method for calculation of credit expenses and not using NTN's nominal interest

rate; (4) reconsideration of NTN's claim that certain home market sales were not in the ordinary course of trade and therefore should be excluded from the calculation of foreign market value; (5) reconsideration of whether discounts should be deducted from home market sales prices for purposes of the below-cost of production sales test; (6) comments upon the question whether the above-cost home market TRB sales were adequate for calculating foreign market value; (7) correction of computer programming instructions (a) to preclude the exclusion of certain home market sales for calculation of foreign market value, and (b) to properly merge home sales data base with U.S. sales data base. Commerce's determination is affirmed in all other respects. Remand results are due within ninety (90) days of the date this opinion is entered. Any comments or responses are due within thirty (30) days thereafter. Any rebuttal comments are due within fifteen (15) days of the date responses or comments are due.

(Slip Op. 94–109)

ASMARA USA, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94–03–0143

(Dated July 6, 1994)

ORDER

DICARLO, *Chief Judge:* Upon consideration of defendant's consent motion for remand and upon due deliberation, it is hereby

ORDERED that defendant's motion granted; further

ORDERED that this action is remanded for 60 days from the date of this order for the purpose of granting plaintiff's protest.

(Slip Op. 94–110)

AUDIO FANTASY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94–03–0144

(Dated July 6, 1994)

ORDER

DICARLO, *Chief Judge:* Upon consideration of defendant's consent motion for remand and upon due deliberation, it is hereby

ORDERED that defendant's motion is granted; it is further

ORDERED that this action is remanded for 60 days from the date of this order for the purpose of granting plaintiff's protest.

(Slip Op. 94–111)

JAPANESE DISTRIBUTORS CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94–03–0145

(Dated July 6, 1994)

ORDER

DICARLO, *Chief Judge:* Upon consideration of defendant's consent motion for remand and upon due deliberation, it is hereby

ORDERED that defendant's motion is granted; it Is further

ORDERED that this action is remanded for 60 days from the date of this order for the purpose of granting plaintiff's protest.

(Slip Op. 94–112)

SUGIYAMA CHAIN CO., LTD., I&OC OF JAPAN CO., LTD., AND HKK CHAIN CORP OF AMERICA, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 92–10–00661

(Dated July 7, 1994)

JUDGMENT

ORDER

CARMAN, *Judge:* This case having been duly submitted for decision and this Court, after due deliberation, having rendered a decision herein, which reversed in part, remanded in part and sustained in part the Department of Commerce's final results in *Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review,* 57 Fed. Reg. 43,697 (1992); and Commerce having reported the results of its remand determination to this Court; and plaintiffs having accepted the remand determination, it is hereby

ORDERED the Department of Commerce's *Final Results of Redetermination Pursuant to Court Remand, Sugiyama Chain Co. v. United States,* Slip Op. 93–78 is sustained; and it is further

ORDERED this case is dismissed.

(Slip Op. 94–113)

HEMSCHEIDT CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92–09–00591

[Plaintiff's motion for summary judgment granted; judgment entered for plaintiff.]

(Dated July 8, 1994)

Robert Wray Associates (Robert T. Wray), for plaintiff.
Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Mark S. Sochaczewsky),* for defendant.

OPINION

GOLDBERG, *Judge:* This matter is before the court on plaintiff's motion for summary judgment. Plaintiff, Hemscheidt Corporation ("Hemscheidt"), contests the June 19, 1992 decision of the United States Customs Service ("Customs") to deny Hemscheidt's protest against Customs' classification of the subject merchandise. The court exercises its jurisdiction pursuant to 28 U.S.C. § 1581(a)(1988).

BACKGROUND

The subject merchandise consists of self-propelled hydraulic shield supports for use in underground coal mining machinery ("shield supports"). Shield supports are one of three components of a long wall mining machine; such machines are comprised of: (1) a cutting device which removes the coal as it moves along the face of the coal deposit; (2) a face conveyer, located underneath the cutting tool, which transports the coal as it is removed; and (3) an advancing mechanism and shield support which serve as a platform for (1) and (2). A shield support advances the cutting device and face conveyor toward the new face as the coal is cut, and protects the cutting mechanism and the conveyor from the newly exposed roof at the face of the deposit. No single component, or even two components, could function as the coal mining machinery for which they were designed without the third component. *Plaintiff's Complaint,* Statement of Facts ¶¶ 1–3; *Defendant's Answer* at 1.

Hemscheidt, an importer of shield supports, asserts that it entered, and Customs liquidated, twenty-one entries of shield supports under Heading 8430 of the Harmonized Tariff Schedule of the United States ("HTSUS"), after the HTSUS went into effect on January 1, 1989 but before September 1990. *Brief in Support of Plaintiff's Motion for Summary Judgment ("Plaintiff's Brief")* at 7,. *Affidavit of John Myron* at 1. Heading 5420, HTSUS, covers, *inter alia,* excavating and extracting machinery for earth, minerals, and ores. Between August 29, 1990, and January 29, 1991, Hemscheidt made four additional entries totalling 290 shield supports under subheading 8430.31.00, HTSUS, at a duty rate of 2.5 percent *ad valorem. Plaintiff's Complaint,* Statement of Facts ¶¶ 15–18. In April 1991, however, Customs liquidated these four entries

under subheading 8479.89.90, HTSUS, at a duty rate of 3.7 percent *ad valorem,* and demanded that Hemscheidt pay the difference in duties, plus interest. Heading 8479 is a basket provision covering machines having individual functions and not specified or included elsewhere in chapter 84 of the HTSUS.

Hemscheidt protested Customs' liquidation classification of these four entries. Upon denial of its protest by Customs, Hemscheidt commenced this action on August 28, 1992. Hemscheidt now seeks a ruling from this court that shield supports are classifiable under either subheading 8430.50.50 or 8431.49.90, HTSUS. Subheading 8430.50.50 imposes a duty rate of 2.5 percent *ad valorem,* and covers "other" self-propelled excavating and extracting machinery for earth, minerals, and ores. subheading 8431.49.90 also imposes a duty rate of 2.5 percent *ad valorem,* and covers "other" parts for use with machines mentioned under Headings 8425 to 8430. On October 20, 1993, Hemscheidt filed, pursuant to USCIT Rule 56, the summary judgment motion that is presently before the court.

The parties agree that, prior to the enactment of the HTSUS, there was a uniform and established practice ("UEP") of classifying shield supports as extracting machinery under Item 66408 of the Tariff Schedules of the United States ("HTSUS"), dutiable at the rate of 2.5 percent *ad valorem. Plaintiff's Brief* at 8; *Defendant's Memorandum in Support of Its Opposition to Plaintiff's Motion for Summary Judgment ("Defendant's Brief")* at 4. The parties disagree, however, whether that UEP continued after the HTSUS went into effect on January 1, 1989. Customs contends that the UEP applicable under the TSUS was terminated as of that date. Hemscheidt argues that a UEP of classifying shield supports as extracting machinery survived implementation of the HTSUS, and continues to apply given Customs' failure to provide the requisite notice of departure from that UEP.

The issue presented to the court is whether, as a matter of law, a UEP of classifying the subject merchandise as extracting machinery survived implementation of the HTSUS. This classification dispute does not raise genuine issues of material fact, but only a question of law properly decided by the court on a motion for summary judgment. *See, e.g., Semperit Indus. Prods., Inc. v. United States,* Slip Op. 94–100 at 12 (CIT June 14, 1994). If the court finds that the referenced UEP attached to Headings 8430 and 8431 as of January 1, 1989, the court must then determine whether Hemscheidt was afforded proper notice of Customs' decision to classify shield supports under Heading 8479 of the HTSUS.

The challenging importer has the burden of overcoming the statutory presumption that Customs' classification decision is correct. 28 U.S.C. § 2639(a)(1) (1988). This court will not sustain Customs' decision, however, if there are compelling indications that it is incorrect. *See Jarvis Clark Co. v. United States,* 2 Fed. Cir. (T) 70, 74–75, 733 F.2d 873, 877–78 (1984).

DISCUSSION

The court will first determine whether the TSUS UEP survived enactment of the HTSUS, and if so, to which HTSUS provision(s) that UEP attached, i.e. Headings 8430 and 8431, or Heading 8479. The analytical framework applied in *Beloit Corp. v. United States,* 18 CIT ____, 843 F. Supp. 1489 (1994), is equally applicable in the present case. *Beloit* also involved a dispute over the proper classification of merchandise after implementation of the HTSUS. The plaintiff in *Beloit* contended that a uniform classification practice lasting twenty-three years under the TSUS continued to apply after the HTSUS became effective, despite Customs' insistence on classifying the subject merchandise under a dissimilar HTSUS provision. *Beloit,* 843 F. Supp. at 1493. Analogous to this case, the TSUS provision in *Beloit* was similar to, but not identical to, the HTSUS provision suggested by plaintiff; also, the provision advocated by Customs in *Beloit* marked a significant departure from prior practice. *Id.* at 1498.

In deciding to grant plaintiff's motion for summary judgment, the *Beloit* court considered several factors: the language of the competing classification provisions; the over twenty–three years of uniform treatment of the merchandise by both Congress and Customs prior to implementation of the HTSUS; the relevant *Explanatory Notes;*[1] and a 1988 International Trade Commission Report,[2] also cited by Hemscheidt in this case. *Beloit,* 843 F. Supp. at 1496–1502. Weighing similar factors here, the court finds that Customs' statutory presumption of correctness has been overcome and that the subject imports are properly classified under Heading 8430, HTSUS.

A. *Comparison of TSUS and HTSUS Plain Language:*

Although the language of Headings 8430 and 8431, HTSUS, is not identical to the language of Item 664.08, TSUS, there are significant similarities. Item 664.08, TSUS, and Headings 8430 and 8431, HTSUS, are reprinted below.

> **Item 664.08, TSUS (1987):**
> Mechanical shovels, coal-cutters, *excavators, scrapers,* bulldozers, and *other excavating, leveling, boring,* and *extracting machinery,* all the foregoing, whether stationary or mobile, *for earth, minerals, or ores; pile drivers; snow plows,* not self-propelled; all the foregoing and *parts thereof:* * * * Other[.] (Emphasis added).
>
> **Heading 8430, HTSUS (1991):**
> *Other* moving, grading, *leveling, scraping, excavating,* tamping, compacting, *extracting* or *boring machinery for earth, minerals or ores; pile-drivers* and pile-extractors; *snowplows* and snowblowers[.] (Emphasis added).

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[1] Customs Co-Operation Council, *Harmonized Commodity Description and Coding System: Explanatory Notes* (1986) *("Explanatory Notes")*

[2] U.S. International Trade Commission, *Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System,* USITC Pub. No. 2051 (Jan. 1988) *("1988 ITC Conversion Report").*

> **Heading 8431, HTSUS (1991):**
> *Parts* suitable for use solely or principally with the machinery of headings 8425 to 8430[.] (Emphasis added).

The emphasized language is common to both Item 664.08, TSUS, and Headings 8430 and 8431, HTSUS. The court further notes that coal-cutters are now found in subheadings 8430.31.00 and 8430.39.00, HTSUS, while self-propelled bulldozers and mechanical shovels are now found in Heading 8429, HTSUS. When viewed together in their entirety, it is thus evident that Headings 8430 and 8431 substantially replace Item 664.08, either word for word or with analogous language.

In contrast, a comparison of the language in Item 664.08, TSUS, and Heading 8479, HTSUS, is considerably less fruitful. These provisions are reprinted below.

> **Item 664.08, TSUS (1987):**
> Mechanical shovels, coal-cutters, excavators, scrapers, bulldozers, and other excavating, leveling, boring, and extracting machinery, all the foregoing, whether stationary or mobile, for earth, minerals, or ores; pile drivers; snow plows, not self-propelled; all the foregoing and parts thereof: * * * Other[.]
>
> **Heading 8479, HTSUS (1991):**
> Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof[.]

There is no common language between the two provisions. The HTSUS language is considerably less specific than the TSUS language, a function of the fact that Heading 8479 is a basket provision covering merchandise not specified or included elsewhere in chapter 84. Furthermore, Heading 8479 adds a special criterion: products included in this category must have "individual functions." No such requirement existed in the TSUS provision. Classifying shield supports under Heading 8479, HTSUS, would thus be a noticeable departure from Item 664.08, TSUS.

The legislative history of the Omnibus Trade and Competitiveness Act of 1988 indicates that the conversion from the TSUS to the HTSUS was to be essentially revenue neutral, and that prior decisions

> by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS, *particularly where the nomenclature* previously interpreted in those decisions *remains unchanged and no dissimilar interpretation is required by the text of the HTS.*

H.R. Rep. No. 576, 100th Cong., 2d Sess. 549–50 (1988) (emphasis added). This court is obliged "'to honor the clear meaning of a statute, as revealed by its language, purpose, and history.'" *Southeastern Community College v. Davis,* 442 U.S. 397, 411 (1979) (citation omitted). Customs' present classification of shield supports under Heading 8479, HTSUS, which conflicts with both the express language of Heading

8430, HTSUS, and "with [Customs'] earlier interpretation[,] is entitled to considerably less deference than [would] a consistently held agency view." *Madison Galleries, Ltd. v. United States,* 7 Fed. Cir. (T) 56, 60, 870 F.2d 627, 631 (1989) (citation omitted). Viewing the language in Headings 8430 and 8431 as a modification of the TSUS language is clearly less disruptive than is Customs' liquidation classification under Heading 8479. The new HTSUS provisions represent only a slight modification in that a separate heading for related parts, i.e. Heading 8431 was added. A comparison of the provisions at issue simply fails to indicate that Congress intended to alter a UEP dating back over twenty years when it enacted the HTSUS.[3]

B. *Review of Relevant Explanatory Notes:*

The *Explanatory Notes* for Heading 8479, HTSUS, further illustrate that Customs incorrectly liquidated shield supports under this provision. *Explanatory Note 84.79* states that Heading 8479 is restricted to machinery having individual functions, which:

> (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note[;] and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature[;] and (c) *Cannot be classified in any other particular heading of this Chapter since:*
>
> (i) *No other heading covers it by reference to its method of functioning, description or type[;]* and
>
> (ii) *No other heading covers it by reference to its use or to the industry in which it is employed[;]* or
>
> (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

Explanatory Note 84.79 at 1314 (emphasis added). Classifying shield supports with other self-propelled extracting machinery under Heading 8430, HTSUS, is consistent with the intention expressed in the *Explanatory Notes* to group together merchandise with similar function, description or type. Shield supports have no function other than as a component of long wall coal mining machinery; indeed, Customs has not even suggested that the function of shield supports has changed since implementation of the HTSUS. Furthermore, none of the other subheadings under Heading 8479 are even remotely related to the coal mining industry in general or the function of shield supports in particular. The subheadings under Heading 8479 refer to machinery for: public works; extraction or preparation of animal or fixed vegetable fats or oils; presses for the manufacture of particle board; treating wood or cork; making rope or cable; treating metal; mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring. *Explanatory Note 84.79* at 1313–14. In contrast, both *Explanatory Note*

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[3] In 1963, shield supports were classifiable under Item 664.05, TSUS, the predecessor classification provision to Item 664.08, TSUS. The language applicable to shield supports did not change as a result of this renumbering. *Compare* Item 664.05, TSUS (1963) *with* Item 664.08, TSUS (1987). Hemscheidt traces the TSUS UEP to at least February 1967. *Plaintiff's Complaint,* Statement of Facts ¶ 10 (citing a Customs ruling letter numbered C.I.E. 227/67 and dated February 17, 1967).

84.30 and Heading 8430 itself, expressly establish that this provision relates to the mining industry, including the coal mining industry. *See Explanatory Note 84.30* at 1205.

The court thus finds that classifying shield supports with other merchandise from the same industry and with similar uses under Heading 8430, HTSUS, is more consistent with prior practice, in contrast to Heading 8479, HTSUS, which does not encompass such merchandise.

C. *1988 ITC Conversion Report:*

Hemscheidt also cites the *1988 ITC Conversion Report* as additional support for its argument that Headings 8430 and 8431, HTSUS, replace Item 664.08, TSUS. The chart contains numerous cross-references between Item 664.08, TSUS, and Headings 8430 and 8431, HTSUS. *1988 ITC Conversion Report,* Annex I at 250. Significantly, Customs' proposed classification heading, i.e. Heading 8479, is not cross-referenced to Item 664.08, TSUS. *See id.,* Annex II at 276–77.

The court notes that the conversion chart is only a guide, and is not dispositive of tariff classification disputes. *See 1988 ITC Conversion Report* at 3; *TSUSA/HTSUS Cross Reference Clarification,* 53 Fed. Reg. 27,447 (July 20, 1988). Nevertheless, without giving the publication undue weight, the court finds that the *1988 ITC Conversion Report* lends further support to Hemscheidt's argument that an abrupt departure from a prior uniform and established classification practice with regard to shield supports was not intended.

In summary, when the HTSUS was implemented, a UEP of classifying shield supports as extracting machinery had been in effect for over twenty years. The language from the prior TSUS classification was carried over, nearly verbatim, in Headings 8430 and 8431, HTSUS. In addition, the *1988 ITC Conversion Report* cross-references Item 664.08, TSUS, with Headings 8430 and 8431, HTSUS, thus lending further support to Hemscheidt's position, as do the relevant *Explanatory Notes.* The court therefore concludes that the UEP established under the TSUS with regard to shield supports was carried over to Headings 8430 and 8431 of the HTSUS.

D. *Notice:*

Having thus determined that the TSUS UEP continues to apply under the HTSUS, the court turns to the final issue raised by Hemscheidt; that is, whether Customs was required to publish a notice in the Federal Register thirty days prior to the effective date of the imposition of an increased duty rate applicable to shield supports. *Plaintiff's Brief* at 6. The relevant statute, 19 U.S.C. § 1315(d) (1988), requires publication of notice of a change in classification which results in an increase in duty, but only for merchandise previously classified in accordance with a

UEP.[4] Customs has conceded that it did not publish any notice in the Federal Register regarding shield supports. *Defendant's Answer* at 2. Because the UEP of classifying shield supports as extracting machinery survived implementation of the HTSUS, Customs was required to publish notice of its intention to classify shield supports under a new category that would result in the imposition of a higher duty rate. Customs' liquidation of the subject merchandise under subheading 8479.89.90, HTSUS, is therefore reversed.

CONCLUSION

The court finds that a UEP of classifying shield supports as extracting machinery, which dates back to at least 1967, continues to apply under Heading 8430 of the HTSUS. Customs has conceded that it did not publish the requisite notice of a change in classification in the Federal Register; therefore, as a matter of law, the court finds that Customs' presumption of correctness has been overcome, and that Hemscheidt's shield supports are properly classified under subheading 8430.50.50, HTSUS, as other self-propelled extracting machinery. The court grants Hemscheidt's motion, and reverses Customs' classification of the subject merchandise. Judgment will be entered for plaintiff.

[4] The statute reads:

> No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling * * *.

19 U.S.C. § 1315(d) (1988).

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/74 7/8/94 Tsoucalas, J.	Catherine Hall, Int'l, Ltd.	93–09–00539	6211.43.00500, 6211.43.00403 17%	6202.93.4500 7.6% (jackets) 6204.63.3000 7.6% (trousers)	Agreed statement of facts	New York "Jogging suits" (jackets and trousers)
C94/75 7/8/94 Tsoucalas, J.	Sandvik Coromant	93–06–00329	2849.90.3000 10.5%	Merchandise "A" 3823.30.0000 3.6% Merchandise "B" 3823.30.000 Free of duty	Agreed statement of facts	New York and Philadelphia Cemented carbide powders
C94/76 7/8/94 Tsoucalas, J.	Sanyo Fisher (USA) Corp.	92–05–00346	8527.31.50 4.9% 8527.39.00 6% 8519.99.00, 8522.90.90, 8527.19.00, 8529.90.50, 8543.90.90 Various rates	PHW805BA 8527.11.1100 3.7% MT919B 8519.39.00 3.9% EQ919B, DAC919B 8543.80.90 3.9% DAC914AB 8519.99.00 3.9% MT911AB 8519.39.00 3.9% MC–755 A8527.31.4000 Free GSP	Agreed statement of facts	Los Angeles Various Model Nos. of double cassette stereo

U.S. COURT OF INTERNATIONAL TRADE,
OFFICE OF THE CLERK,
New York, N.Y., July 5, 1994.

ANNOUNCEMENT

Chief Judge Dominick L. DiCarlo had announced that the United States Court of International Trade will hold its 1994 Judicial Conference on Wednesday, November 16th at the Holiday Inn Crowne Plaza (Broadway & 49th Street) in New York City.

As in the past, lawyers and others who are interested in the field of customs and international trade law will be invited to attend.

Notice of the formal program, including topics and speakers, and registration information will be available on or about September 30th.

For further information, contact Leo M. Gordon, Assistant Clerk, at 212–264–7090.

JOSEPH E. LOMBARDI,
Clerk of the Court.

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